United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7054

In The

United States Court of Appeals

For The Second Circuit

STATEN ISLAND SUPPLY COMPANY, INC.,

Plaintiff-Appellee,

vs.

A.O. SMITH CORPORATION, EQUIPMENT DISTRIBUTORS CORP. and BROOKLYN UNION GAS COMPANY,

Defendants,

A.O. SMITH CORPORATION,

Defendant-Appellant.

On Appeal From the United States District Court For the Eastern District of New York

UNITED STATES COURT OF APPEALS
FILED
MAR 4 1976
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SECOND CIRCUIT

JOINT APPENDIX

TURK, MARSH, KELLY & HOARE
Attorneys for Appellant
666 Fifth Avenue
New York, New York 10019
(212) 765-5900

LOUIS C. PULVERMACHER, P.C.
Attorney for Appellee
410 Park Avenue
New York, New York 10022
(212) 758-8001

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Date	Proceedings
3-28-75	Complaint filed. Summons issued.
4-30-75	ANSWER of deft. A. O. Smith Corp. filed.
5-2-75	By PLATT, J. - Opinion dtd 5-1-75 granting pltff's motion for a T.R.O. filed. (copies mailed to attys).
9-9-75	By PLATT, J. - Order to Show Cause ret 9-19-75 why an order should not be entered dissolving the preliminary injunction pf 5-1-75 etc. filed.
9-9-75	Document for filing filed.
9-11-75	Affidavits of service filed.
9-18-75	Affidavit in Opposition to Motion filed.
9-24-75	Reply affidavits in support of order to show cause filed.
9-29-75	Documents for filing filed.
11-14-75	Supplemental affidavit of Don Allen Resnikoff in support of order to show cause filed.
1-6-76	Supplemental Affidavit in Support of Order to Show Cause filed.
1-6-76	Document for Filing filed.
1-16-76	By PLATT, J. - Memorandum & Order dtd 1-15-76 denying deft's motion to dissolve the preliminary injunction filed. Copies mailed to parties.
2-11-76	NOTICE OF APPEAL FILED. Duplicate of Notice of Appeal mailed to the C. of A. and attys. Cert. copy of docket entries sent to C. of A.
2-11-76	Undertaking for Costs on Appeal filed.
2-25-76	Document for filing (Copy of Memo to J. Platt from V. Catoggio)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

STATEN ISLAND SUPPLY COMPANY, INC.,

Plaintiff,

-against-

A.O. SMITH CORPORATION, EQUIPMENT DISTRIBUTORS CORP. and BROOKLYN UNION GAS COMPANY,

Defendants.

----------X

75 Civ.

COMPLAINT

PLAINTIFF DEMANDS TRIAL BY JURY

Plaintiff, a New York corporation having its principal office and place of business at 1390 Richmond Terrace, Staten Island, New York, by its attorney, LOUIS C. PULVERMAHCER, P.C., complaining of the defendants respectfully alleges:

FIRST CAUSE OF ACTION

1. This action arises under the antitrust laws of the United States, more particularly 15 U.S.C. § 2, commonly known as § 2 of the Sherman Act, and 15 U.S.C. § 13, commonly known as § 2 of the Clayton Act as amended by the Robinson-Patman Act. Jurisdiction is conferred upon this Court by 15 U.S.C. § § 14 and 26 and by 28 U.S.C. § 1337.

2. Plaintiff now is and at all times hereinafter mentioned has been a wholesaler of plumbing supply products to plumbers and retail users of plumbing supply equipment, primarily in the Staten Island, New York area and secondarily in the Brooklyn and Queens area, and is and has been a distributor of certain of A.O. SMITH CORPORATION's boilers, heaters and plumbing equipment.

3. Defendant A.O. SMITH CORPORATION ("SMITH") is and at all times mentioned herein has been a manufacturer of water heaters, boilers and plumbing equipment and upon information and belief maintains its principal office and place of business in Milwaukee, Wisconsin, and is a New York corporation.

4. Defendant EQUIPMENT DISTRIBUTORS CORPORATION ("DISTRIBUTORS") has been a distributor of plumbing supply products manufactured by defendant SMITH and upon information and belief maintains its principal office and place of business at 87-41 130th Street, Richmond Hills, Queens, New York and is a New York corporation. Defendant DISTRIBUTORS is in active competition with plaintiff. Upon information and belief, defendant DISTRIBUTORS is the only other distributor in the City of New York, except Lincoln Plumbing Supply, Inc., in Staten Island.

5. Defendant BROOKLYN UNION GAS COMPANY (" GAS COMPANY") is a vendor of gas boilers and heaters to the general public in Long Island and upon information and belief maintains its principal office and place of business at 195 Montague Street, Brooklyn, New York, and is a New York corporation.

6. Defendant SMITH has in all years on and after 1960 sold boilers, heaters and plumbing equipment directly to plaintiff and plaintiff has sold and distributed boilers, heaters and plumbing equipment directly to plumbers and retail customers primarily in Staten Island and secondarily in other counties in the New York City area.

7. Heretofore defendant SMITH entered into a Distributor Sales Agreement ("The Agreement") on October 8, 1973 terminable by either party on thirty days notice.

8. Heretofore defendant SMITH, by letter dated February 25, 1975, notified plaintiff that defendant SMITH was terminating the Agreement as provided.

9. During the calendar year 1974, defendant SMITH sold to plaintiff plumbing supplies of the wholesale value of approximately $300,000.

10. Heretofore and on an unknown date plaintiff offered to sell boilers and heaters to defendant GAS COMPANY at prices less than those offered by defendant DISTRIBUTORS.

11. Defendant SMITH directed plaintiff not to sell or offer to sell defendant SMITH's boilers, heaters and plumbing equipment to defendant GAS COMPANY and advised

plaintiff that such sales of defendant SMITH's boilers, heaters and plumbing equipment would be made only by defendant DISTRIBUTORS, although defendant GAS COMPANY sells defendant SMITH's equipment in Staten Island.

12. Defendant SMITH manufactures its plumbing products in factories located in Kankakee, Illinois and other places located outside the State of New York. Defendant SMITH ships such products in interstate commerce to plaintiff in New York from warehouses and plants located outside the State of New York.

13. All of the boilers, heaters and plumbing equipment which defendant SMITH has heretofore sold to plaintiff or to other distributors, including defendant DISTRIBUTORS, in competition with plaintiff have been sold for use or resale within the United States.

14. Upon information and belief defendant GAS COMPANY sells defendant SMITH's boilers, heaters and plumbing equipment to the general public at prices in excess of so-called "list prices", established by defendant SMITH.

15. Plaintiff sells defendant SMITH's equipment at prices less than the so-called "list prices" established by defendant SMITH.

16. As a direct consequence and result of defendant SMITH's notice of termination of the Agreement, defendant DISTRIBUTORS will be the only distributor of defendant

SMITH's boilers, heaters and plumbing equipment in the City of New York, except Lincoln Plumbing Supply, Inc., a minor distributor.

17. As a direct consequence of defendant SMITH's termination of the Agreement palintiff has been and will be injured in its business and property in the following manner:

(a) Plaintiff's profits have been and will be diminished by the loss of sales of defendant SMITH's boilers, heaters, and plumbing equipment.

(b) Trade has been and will be diverted from plaintiff to defendant DISTRIBUTORS and has caused and will cause plaintiff's customers to reduce their purchases of allied lines, thus further reducing plaintiff's sales and profits.

SECOND CAUSE OF ACTION

18. Plaintiff repeats the allegations contained in paragraphs "1" through "16" hereof.

19. Upon information and belief defendants SMITH and DISTRIBUTORS have combined and conspired with each other to monopolize the sale of defendant SMITH's boilers, heaters and plumbing equipment in New York City and with defendant GAS COMPANY to cause the boilers, heaters and plumbing equipment to be sold at non-competitive prices to and by defendant GAS COMPANY to the general public.

20. By the elimination of plaintiff as a distributor such discriminatory distribution by defendant SMITH has the effect of making the price paid by the consuming public substantially greater in the New York City area than in other areas of distribution within the United States.

THIRD CAUSE OF ACTION

21. Plaintiff repeats the allegations contained in paragraphs "1" through "16" and "18", "19" and "20" hereof.

22. Since January 1, 1973, plaintiff has built additional warehouse facilities and purchased special handling equipment of value in excess of $200,000 to store, supply, handle and deliver the products of defendant SMITH to wholesale and retail customers of plaintiff.

23. As a result of defendant SMITH's monopolization and attempt to monopolize its pattern of distribution as aforesaid, plaintiff has been injured in its business and property by the resulting loss of sales and profits.

FOURTH CAUSE OF ACTION

24. Plaintiff repeats the allegations contained in paragraphs "1" through "16", "18", "19", "20" and "22" hereof.

25. Defendant SMITH's notice of termination of the Agreement is irreparable and the consequential injuries and damages to plaintiff are continuing and threaten to continue in the future.

WHEREFORE, plaintiff demands a permanent injunction against defendant SMITH enjoining defendant SMITH from refusing to continue to sell plaintiff boilers, heaters, and plumbing equipment and judgment for treble its actual damages of $400,000 together with reasonable attorney's fees, interest and costs of suit and for such other and further relief as to this court may seem just and proper.

Louis C. Pulvermacher
Attorney for Plaintiff
410 Park Avenue
New York, New York 10022
(212) Plaza 8-3001

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- -X

STATEN ISLAND SUPPLY COMPANY, INC., :

Plaintiff, : 75 Civ. 461

- against - : ANSWER OF DEFENDANT A. O. SMITH CORPORATION

A. O. SMITH CORPORATION, EQUIPMENT DISTRIBUTORS CORP. and BROOKLYN UNION GAS COMPANY, :

Defendants. :

- -X

Defendant A. O. Smith Corporation ("Smith") by its attorneys, Turk, Marsh, Kelly & Hoare, answers the Complaint of Plaintiff as follows:

FIRST CAUSE OF ACTION

1. Smith admits that the Complaint purports to be filed and the action instituted under 15 U.S.C. §§ 2, 13, 14, 26, and 28 U.S.C. 1337. Smith denies each and every other allegation contained in paragraph 1 of the Complaint.

2. Smith admits that plaintiff has purchased certain boilers, heaters and plumbing equipment from Smith pursuant to contracts between plaintiff and Smith. Smith denies knowledge or information sufficient to form a belief as to the truth of each and every other allegation contained in paragraph 2 of the Complaint.

3. Smith admits that it is and has been a manufacturer of water heaters, boilers, and plumbing equipment, and that it is and has been a New York corporation, and that

it maintains its principal offices for the conduct of its business in Milwaukee, Wisconsin. Smith denies knowledge or information sufficient to form a belief as to each and every other allegation as may be intended in paragraph 3 of the Complaint.

4. Smith admits, upon information and belief, that Equipment Distributors Corporation maintains an office for the conduct of its business at 87-41 130th Street, Richmond Hill, Queens, New York, and admits that Equipment Distributors Corporation has purchased certain boilers, heaters, and other plumbing equipment from Smith pursuant to agreements between Equipment Distributors Corporation and Smith. Smith denies that Equipment Distributors Corporation and Lincoln Plumbing Supply, Inc. are the only distributors of Smith products either in Staten Island or New York City as a whole. Smith denies knowledge or information sufficient to form a belief as to the truth of each and every other allegation contained in paragraph 4 of the Complaint.

5. Smith admits, upon information and belief, that Brooklyn Union Gas Company is a vendor of boilers and heaters to the general public in the New York metropolitan area, and maintains offices for the conduct of its business at 195 Montague Street, Brooklyn, New York. Smith denies knowledge

or information sufficient to form a belief as to the truth of each and every other allegation contained in paragraph 5 of the Complaint.

6. Smith denies each and every allegation contained in paragraph 6 of the Complaint.

7. Smith admits entering into a "Distributor Sales Agreement" with Plaintiff on October 8, 1973, the terms of which are self-explanatory, so that the characterization which constitutes all the other allegations of paragraph 7 of the Complaint is denied.

8. Smith admits the allegations of paragraph 8 of the Complaint, except that Smith denies knowledge or information sufficient to form a belief as to the meaning of the phrase "as provided" as used in paragraph 8 of the Complaint.

9. Smith denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 9 of the Complaint, by reason of the ambiguity of the phrase "wholesale value" as used in paragraph 9 of the Complaint. Smith affirmatively alleges that during the calendar year ending December 31, 1974, Smith sold to Plaintiff plumbing supplies for which Plaintiff received invoices from Smith requesting payment from Plaintiff to Smith in the approximate amount of $290,000.

10. Smith denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 10 of the Complaint.

11. Smith admits, upon information and belief, that Brooklyn Union Gas Company sells Smith equipment in the New York metropolitan area, including Staten Island. Smith denies each and every other allegation contained in paragraph 11 of the Complaint.

12. Smith admits the allegations of paragraph 12 of the Complaint.

13. Smith denies each and every allegation contained in paragraph 13 of the Complaint.

14. Smith denies each and every allegation contained in paragraph 14 which relates to it, and denies knowledge and information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 14 which relates to "gas company".

15. Smith denies each and every allegation contained in paragraph 15 which relates to it, and denies knowledge and information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 15 which relates to Plaintiff.

16. Smith denies each and every allegation contained in paragraph 16 of the Complaint.

17. Smith denies each and every allegation contained in paragraph 17 of the Complaint.

SECOND CAUSE OF ACTION

18. In answer to paragraph 18 of the Complaint, Smith incorporates by reference herein its above answers to paragraphs 1 through 16 of the Complaint.

19. Smith denies each and every allegation contained in paragraph 19 of the Complaint.

20. Smith denies each and every allegation contained in paragraph 20 of the Complaint.

THIRD CAUSE OF ACTION

21. In answer to paragraph 21 of the Complaint, Smith incorporates by reference herein its above answers to paragraphs 1 through 16, 18 through 20 of the Complaint.

22. Smith denies each and every allegation contained in paragraph 22 of the Complaint.

23. Smith denies each and every allegation contained in paragraph 23 of the Complaint.

FOURTH CAUSE OF ACTION

24. In answer to paragraph 24 of the Complaint, Smith incorporates by reference herein its above answers to paragraphs 1 through 16, 18 through 20, and 22 of the Complaint.

25. Smith denies each and every allegation contained in paragraph 25 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

26. The Complaint fails to state a cause of action against Smith upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

27. Smith's termination of the "Distributor Sales Agreement" entered into by the Plaintiff and Smith on October 8, 1973, was properly effectuated pursuant to paragraph 13 of that agreement ("TERMINATION") and pursuant to Smith's right as a privately owned company to determine to whom it will sell the products it manufactures.

THIRD AFFIRMATIVE DEFENSE

28. Plaintiff's performance has been and is unsatisfactory to Smith by reason of plaintiff's inattention to selling to the plumbing trade in plaintiff's primary territory, Staten Island.

FOURTH AFFIRMATIVE DEFENSE

29. Plaintiff's performance has been and is unsatisfactory to Smith by reason of plaintiff's failure to make adequate provision for service with regard to sales by plaintiff as to which Smith has not waived the requirements with regard to service of paragraph 8 of the "Distributor Sales Agreement" entered into by the Plaintiff and Smith on October 8, 1973.

FIFTH AFFIRMATIVE DEFENSE

30. Plaintiff has caused newspaper advertisements of A. O. Smith products to be published which were not submitted to Smith for approval as required by paragraph 8 of the "Distributor Sales Agreement" entered into by the Plaintiff and Smith on October 8, 1973; which advertisements neglected emphasis on provision of service and the importance of the plumbing contractor, contrary to the sales policy of Smith which is important to Smith's business reputation, thereby causing damage to Smith's business and reputation, and being unsatisfactory to Smith.

SIXTH AFFIRMATIVE DEFENSE

31. Plaintiff has not paid for Smith products as required by Smith's published payment terms, causing money damage to Smith, and being unsatisfactory to Smith.

WHEREFORE, Defendant A. O. Smith Corporation demands judgment dismissing the Complaint as to it, together with the costs and disbursements of this action.

Dated: New York, N. Y.
April 24, 1975

TURK, MARSH, KELLY & HOARE

By _____
Alexander L. Caccia
A Member of the Firm
Attorneys for Defendant
A. O. Smith Corporation
666 Fifth Avenue
New York, New York 10019
212-765-5900

TO:

LOUIS C. PULVERMACHER
Attorney for Plaintiff
410 Park Avenue
New York, N. Y. 10022

OPINION AND ORDER OF PLATT, D.J.
DATED MAY 1, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

STATEN ISLAND SUPPLY COMPANY, INC.,

Plaintiff,

-against-

A. O. SMITH CORPORATION, EQUIPMENT DISTRIBUTORS CORP. and BROOKLYN UNION GAS COMPANY,

Defendants.

- -x

75 C 461

OPINION

May 1, 1975

PLATT, D.J.

Having moved for and obtained a temporary restraining order on March 31, 1975, plaintiff now seeks a preliminary injunction enjoining the defendant A. O. SMITH CORPORATION and its agents and employees from terminating a Distributor Sales Agreement between the plaintiff and said defendant dated October 8, 1973, and from refusing and failing to accept and file plaintiff's orders for boilers, heaters and plumbing equipment on the ground that said defendant's attempted termination and refusal are in violation of the antitrust laws and irreparable harm to the plaintiff will occur if an injunction pendente lite is not granted.

Affidavits were filed in support of and in opposition to plaintiff's motion and an evidentiary hearing was held on April 4th, 11th and 18th, 1975, all of which revealed the following facts:

The plaintiff (hereinafter sometimes "SISCO") is a New York corporation with its office and principal place of business at 1390 Richmond Terrace, Staten Island, New York. SISCO is a small family-owned company founded in 1898 which is engaged in the wholesale distribution of plumbing fixtures and related equipment to plumbing retailers and private individuals primarily on Staten Island but also in the other counties in New York City.

Defendant A. O. SMITH CORPORATION (hereinafter sometimes "SMITH") is a multi-division company with its principal headquarters in Milwaukee, Wisconsin, but its Consumer Products Division headquarters is in Kankakee, Illinois.

Plaintiff has been a distributor of SMITH's boilers, heaters and plumbing equipment for the past 15 years. As indicated above, the most recent Distributor Sales Agreement between the parties is dated October 8, 1973. In paragraph 8, entitled "Sales Effort" of this Agreement it is provided that "[plaintiff] shall establish and maintain an aggressive sales effort for the purpose of promoting and effecting the sale of

the products [of SMITH] in the territory" and in paragraph 13, entitled "Termination" it is provided that "this agreement may be terminated by either [party] upon thirty (30) days written notice sent by registered mail to the other at the address as set forth".

The proof showed the following record of purchases for resale by SISCO of SMITH's products during the years 1973 and 1974:

Year	Smith Product Purchases for Resale	All Products including Smith Purchase for Resale
1973	$110,000.00	$420,000.00
1974	290,000.00	672,000.00

The proof further showed that in 1974 SISCO sold approximately $100,000 of SMITH products to Staten Island customers and that $80,000 of such amount was sold to Staten Island plumbing contractors and $20,000 to Staten Island consumers.

Plaintiff's first witness was Edmund Schwimer, president of the company, who at the outset of his cross-examination was asked "whether anyone from A. O. Smith ever asked you to fix prices" to which he replied affirmatively and when pressed for further details testified that:

> "Approximately 6 months ago and prior to that Mr. Paul Tofe (phonetic) and Bernie Bell (phonetic) [asked us] to upgrade our prices. In fact, it went back further than that; it went back in 1960, where they brought me equipment company price sheets and asked me to get the same prices which was a high price. I says, we can't do that. He says, oh, yes, you should."

* * *

"Mr. Paul Tofe says, we're going to stop your distributor-ship and I said, why. He says you're distributing with our heater and you're not keeping the prices up. You're selling them too cheap."

* * *

"I says, we didn't go along with that, it's against the law.

* * *

"He says, we'll see about that."

* * *

"They come in the supply and they kept saying, we got to get this straightened out. We're going to cut you out if we don't get the things ironed out here."

Plaintiff's second witness was the company president's son who testified that he was a vice president of the plaintiff. He confirmed the foregoing testimony of his father and on direct examination he testified that he had a conference with defendant SMITH's district sales manager, Bernard Gill, in late 1973 wherein Mr. Gill expressed astonishment at plaintiff's sales record of $110,000 for that year. He was advised by Mr. Robert Schwimer that they expected to "do" $300,000 the following year to which Mr. Gill replied, "over my dead body. We'll get rid of you first."

In addition, young Mr. Schwimer testified that when he attempted to submit an offer to sell said defendant's hot water heaters to the Brooklyn Union Gas Company, Smith's regional manager Paul Toth and Mr. Gill told him: "You don't quote the utility, you don't do that. They are paying more than you quoted them. You're upsetting the apple cart."

When asked on cross-examination "why would Mr. Gill object to increased sales" young Mr. Schwimer replied that: "Because he didn't like the fact that I was going across the bridge, and he told me so * * * the Verrazano, to Brooklyn, Queens, Manhattan, Long Island, that was protected territory, according to him * * * [he said] stay out of Brooklyn, Queens, Manhattan, Long Island" * * * many times but more frequently as our business grew, '73, '74."

On February 25, 1975 Messrs. Toth and Gill came into young Mr. Schwimer's office at SISCO and stated that SISCO's distributorship was being terminated "for the best interest of the company" (SMITH).

Three days later on February 28, 1975 young Mr. Schwimer received by registered mail, return receipt requested, a letter terminating the Agreement of October 8, 1973 on 30 days notice.

In the ensuing 30-day period when Mr. Schwimer attempted to obtain SMITH products from two other distributors, viz: Mr. Joseph Balessa of Hunterdon Plumbing and Mr. Ed Wilson of Wilson Plumbing Supply, he was advised by them that they have been warned by SMITH "if you supply SISCO, we're trying to get rid of them, don't supply them." (It was stipulated that if Mr. Wilson had been called he would have denied such threat but no such stipulation was made with respect to Mr. Balessa).

In answer to plaintiff's witnesses, defendant SMITH called its regional manager, Paul Toth, who gave the following reasons for the termination of the plaintiff:

1. "* * * The main reason [was] that we don't feel that he is performing in his primary area selling to plumbing contractors *** that his retail selling concentrated on the retail selling ***".

2. "There were some secondary reasons; one would be his service, and this would be a service on water heaters outside of his primary area."

3. "The second reason would be his warranty administration".

4. Violation of SMITH's credit rules.

5. Failure to submit ads for approval prior to publication.

With respect to the first of such indicated reasons for termination, Mr. Toth was asked whether he had formed an opinion prior to termination concerning plaintiff's percentage of retail sales in Staten Island and his reply was that he "thought that 50% of the sales on Staten Island approximately 50% of the sales on Staten Island were retail to the consumer." When pressed on how he arrived at this estimate he testified that he thought 80% of the plaintiff's sales of Smith products had been made outside of the Staten Island area and that of the other 20% made within such area, 10% had been made to

plumbing contractors and 10% to retail consumers. He conceded, however, that he had never asked plaintiff for an audit of its books to verify any of these estimates and it was quite evident that he really did not know what percentage of plaintiff's sales were made to plumbing contractors or to retail consumers or to customers within or without the Staten Island area.

The second and third reasons given by the defendant SMITH for its termination of the Distributor Sales Agreement were that the plaintiff's general service and warranty administration service on SMITH products which plaintiff had sold has been unsatisfactory over the past 10 years or more. When questioned on cross-examination, however, SMITH's regional manager, Paul Toth, admitted that in the previous 10-year period there had been only one problem in warranty administration, the so-called Zappala claim, and one specific complaint in the general service area on a commercial water heater.

At some point prior to the termination, the parties had had a dispute with respect to the servicing of SMITH's products sold by the plaintiff to customers outside of the Staten Island area but this had been resolved by the plaintiff agreeing to reimburse SMITH for any such servicing costs.

The fourth reason given by the defendant SMITH for the cancellation is that the plaintiff did not comply with SMITH's credit practices in that plaintiff refused to pay

for goods received between the 25th and end of the month before the 15th of the following month as SMITH requested but insisted upon treating the same as having been received in such following month as to which payment was not due until the 15th of the month thereafter.

There is no question but that the parties argued about this point some eight or nine months before the termination but it seems equally clear (i) that the parties did not regard this as a material difference between them (until after the termination) and (ii) that SMITH was not being materially affected by the difference because "For some time now we (SMITH) have not shipped Staten Island Supply after the 25th to avoid such a problem."

SMITH further complains that plaintiff did not submit its ads to SMITH for prior approval in alleged violation of paragraph 8 of the Distributor Sales Agreement. The testimony showed, however, (i) that such had never been the practice under the Agreement and (ii) that SMITH's representative Gill at the very least acquiesced in the publication of the ads in question without requiring any such submission. Mr. Gill never took the stand to refute plaintiff's contention on this point.

In short, the defendant's claimed "proper business reasons" for the termination of the Agreement between the parties leave a lot to be desired. All of the reasons advanced,

except possibly the first, appear to have been put together after the act in an attempt to justify the same. In essence, each was without much substance and individually or collectively would not appear to have justified the drastic action taken.

The same is essentially also true with respect to SMITH's first reason. The Court does not believe that a company such as SMITH would base a decision on such a reason without a careful investigation of the facts to make sure they supported the reason. In this case they clearly did not. SMITH said that in its opinion plaintiff was selling 50% of its products on Staten Island to retail customers and this was its primary basis for termination; the proof showed, however, that only 20% of SMITH's products were being so sold.

The discrepancy is substantial and material and can only lead the Court to believe that the real reasons for the attempted termination were other than those advanced by SMITH.

Plaintiff's proof showed that SMITH's employees had continuously for several years been threatening termination because plaintiff refused to raise its prices to the level stated in SMITH's price sheets. Moreover, SMITH's representative were flabbergasted ("over my dead body. We'll get rid of you first") when they learned that plaintiff had made sub-

stantial, and intended to make further, inroads into the "primary territory" of Equipment Distributors Corp. which was the only designated distributor for SMITH in the counties of Manhattan, Brooklyn, Queens, Nassau and Suffolk -- the so-called "Big Apple Region".

In addition, SMITH's representatives were equally upset when plaintiff attempted to "bid" Brooklyn Union Gas Company, theretofore apparently considered the private domain of Equipment Distributors Corp. which because of its unique position was apparently able to charge all of its customers prices even higher than those set forth in SMITH's price sheets.

All things considered, there appears to be more here than a mere unilateral refusal to deal. (Cf. Von Kalinowski Antitrust Laws & Trade Regulation Sec. 61.02[1]). It remains for a plenary trial, after full discovery, to determine whether in fact there have been one or more violations of the antitrust laws, but clearly there is sufficient evidence to indicate conduct in furtherance of the alleged violations of such laws; e.g., evidence indicating unlawful attempts to allocate territory, fix prices, use of coercive tactics, predatory purposes, etc.

To sustain plaintiff's application for a preliminary injunction, plaintiff need only show further that the "balance of hardship tips decidedly towards plaintiff" and that it has

"raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation." Interphoto Corp. v. Minolta, 295 F.Supp. 711, 722 (S.D.N.Y. 1969), aff'd, 417 F.2d 621 (2d Cir. 1969); Stark v. New York Stock Exchange, 466 F.2d 743, 744 (2d Cir. 1972); Clever Idea Co., Inc. v. Consumer Product Safety Commission, 385 F.Supp. 688, 692 (E.D.N.Y. 1974); Moore v. Kibbee, 381 F.Supp. 834, 837 (E.D.N.Y. 1974); GSE Dynamics, Inc. v. John Doe, et al., 381 F.Supp. 1088, 1094 (E.D.N.Y. 1974).

As to the first test, there is little or no doubt about the balance of hardship. If the defendant SMITH is not enjoined, plaintiff may be driven out of business since almost 50% of its sales are of SMITH's products. SMITH on the other hand will in all probability only sustain minimal, if any, harm by a mandated continuance of its relationship with the plaintiff and may possibly benefit from plaintiff's aggressive sales efforts.

With respect to the second test, as indicated above plaintiff has raised questions so serious, substantial, difficult and doubtful as to make them a fair ground for litigation and for more deliberate investigation. Indeed, adequate discovery may well resolve many of the issues raised herein one way or the other. As things stand now, only a

full exposure of all of the facts will answer the questions posed by the plaintiff in its pleading, motion papers and the hearing held herein.

Under the circumstances, plaintiff's motion for a temporary injunction must be granted, provided, however, that in order to preserve the status quo pending the plenary trial of the issues herein plaintiff shall not

1) sell more than 20% of any of its total sales of SMITH's products in any given New York county directly to consumers in any six-month period;

2) refuse to reimburse SMITH promptly for all service costs as to SMITH's products sold by it outside of Staten Island;

3) charge more than reasonable transportation or other costs for warranty service as prescribed by SMITH's practices;

4) use or publish any advertising or other promotional material without first submitting the same to SMITH for approval;

5) refuse to adhere to SMITH's credit rules;

with the further proviso that if SMITH shall at any time offer to any distributor better conditions as to any of the foregoing, the same shall also be offered to plaintiff (i.e., SMITH shall not discriminate in any such practice or condition against the plaintiff).

It should be understood as to the first of the above conditions that the Court is not at this time passing upon the propriety of the 20% restriction on retail sales. That question will have to await the trial. Secondly, as to condition #4, by requiring plaintiff to comply now with the provisions of the Agreement between the parties, this Court does not intend to authorize the defendants to place any unlawful or unreasonable restrictions on the plaintiff's proposed advertising.

SO ORDERED.

Thom C. Platt
U.S.D.J.

ORDER TO SHOW CAUSE WHY ORDER
SHOULD NOT BE ENTERED DISSOLVING
THE PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- X

STATEN ISLAND SUPPLY COMPANY, INC., :

Plaintiff, :

- against - :

A. O. SMITH CORPORATION, EQUIPMENT DISTRIBUTORS CORPORATION and BROOKLYN UNION GAS COMPANY, :

Defendants. :

- X

75 Civ. 461

ORDER TO SHOW CAUSE

Upon the annexed application sworn to on September 4, 1975 by Don Allen Resnikoff, Esq., a member of the firm of Turk, Marsh, Kelly & Hoare, attorneys for defendant A. O. Smith Corporation ("Smith"), and exhibits annexed thereto, and there being no prior application for this relief, it is

ORDERED that plaintiff show cause at a motion term of this Court, to be held in Room 7, United States Courthouse, on the 19th day of September, 1975, at 2:00 o'clock in the afternoon of that day, or as soon thereafter as counsel may be heard, why an order should not be entered herein dissolving the preliminary injunction directed by the Court herein by order dated May 1, 1975, on the grounds that plaintiff has taken and is taking actions improperly detrimental to defendant Smith and violative of the status quo

preceding the within litigation, and plaintiff threatens to continue such actions; and for such other and further relief as the Court may consider proper, and it is further

ORDERED that service of a copy of this order and of the papers in which it is granted on counsel appearing for each of the parties to this action made on or before September 10, 1975, shall be sufficient service of this order.

s/ Thomas C. Platt
United States District Judge

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- -x

STATEN ISLAND SUPPLY COMPANY, INC., :

Plaintiff, :

- against - :

A. O. SMITH CORPORATION, EQUIPMENT DISTRIBUTORS CORPORATION and BROOKLYN UNION GAS COMPANY, :

Defendants. :

- -x

75 Civ. 461

APPLICATION FOR ORDER TO SHOW CAUSE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, DON ALLEN RESNIKOFF, being duly sworn, depose and say:

1. I am a member of the firm of Turk, Marsh, Kelly & Hoare, attorneys for defendant A. O. Smith Corporation ("Smith"), and I make this application on oath, in support of an order requiring plaintiff to show cause why an order should not be entered herein dissolving the preliminary injunction directed by the Court herein by order dated May 1, 1975, and for such other and further relief as to the Court may seem proper.

2. An expedited hearing on Smith's motion is requested, by reason of the imminent threat of further publications by plaintiff disparaging Smith and its employees and agents and interfering with the contractual relation between Smith and its distributors, as discussed more fully below. The form of order to show cause rather than expedited notice of motion is used to facilitate possible reference of the matter to a Magistrate (Magistrate Catoggio being assigned to supervise discovery matters in the case).

3. The preliminary injunction order of May 1, 1975 entered in this matter required, inter alia, that Smith continue plaintiff as a contract distributor of Smith products, notwithstanding Smith's termination of the contract pursuant to its terms. The order was entered on the explicit finding that "Smith on the other hand will in all probability only sustain minimal, if any, harm by a mandated continuance of its relationship with the plaintiff . . . ." The Court's order of May 1, 1975 contained specific directions to plaintiff to avoid harm to Smith during the period of preliminary injunction and to preserve the status quo.

4. In deference to the Court's judgment, during the period of the preliminary injunction Smith's employees have done their best to be patient with plaintiff's petulance

and insults. However, the two letters of plaintiff to Smith dated August 27, 1975, and annexed as Exhibits A and B, clearly push Smith well beyond what this Court intended to require of Smith during the period of preliminary injunction. (Attached as Exhibit C(1) is the letter of Paul Toth to plaintiff dated August 21, 1975; attachmenmt C(2) being the related notice to plaintiff dated August 6, 1975. Attached as Exhibit D is the letter of D.V. Hall to plaintiff dated August 14, 1975.)

Disparagement; interference with contract relations

5. Plaintiff's letter of August 27, 1975 to Paul Toth of defendant Smith (Exhibit A) says, in part:

> "I am requesting at this time that a new salesman be assigned to handle our account as Gill is just too uncooperative, to put it mildly, for me to accept as an A.O. Smith representative any longer. It is written all over both of your faces the type of men you two really are."
>
> * * * *
>
> "Well your fun and games are about over. I refer you to the letter I sent to Dan Hall."

Referring to the letter sent by plaintiff to Dan Hall (Exhibit B), we find:

> "In addition to the above, these two clowns [Toth and Gill of Smith] have toyed with prices in the New York City area, claiming no additional discounts existed, when in fact they did ....
>
> "All of the above was to protect their little monopoly [in products manufactured by Smith]....

"Isn't it nice to see how a large corporation can be had by a few of the creeps they employ. I feel that Gill and Toth should be relieved, at the very least, of their positions here in Union. This has been reflected for many reasons by several other A. O. Smith distributors.

* * * *

"Now their lack of business knowledge is creating a damaging effect on A. O. Smith's name in the New York City area."

The bottom lines on the foregoing stream of insults are (1) the plaintiff's statement in the "Hall" letter (Exhibit B): "I request at this time that you show this letter to all those in close contact with Toth, as I have done to every person in the Industry that knows him (emphasis added)", and (2) the plaintiff's statement in the "Toth" letter (Exhibit A) that "I am drafting a letter, a copy of which will follow, to be mailed to all Distributors [with whom Smith has a contract relationship] and Sub-Distributors [customers of Distributors] in New York and New Jersey, explaining what you and your pawn [Gill?] have been doing with prices and preferential treatment given a certain distributor".

The Court's order of May 1, 1975 afforded plaintiff judicial protection of plaintiff's relationship with Smith, and clearly contemplated that any real or imagined grievance of plaintiff concerning Smith's adherence to the order be

taken up with the Court, or submitted to Magistrate Catoggio. Clearly the Court order did not contemplate the extra-judicial campaign of villification by plaintiff shown by the letters attached as Exhibits A and B.

Falsified reports submited by plaintiff during the period of preliminary injunction

6. The August 14, 1975 letter of D.V. Hall of Smith to plaintiff (Exhibit D) states, in part:

> "We have recently noticed an increase in the return of water heater warranty restriction letters from your end user customers. These letters, as you know, are sent out after we issue credit to Staten Island Supply, advising the customer of the warranty restriction on the new heater. We, therefore, require that you supply us with the correct name and address, in order that our warranty restriction letter can be sent on to the proper end user.
>
> The first one we received back was from Mr. Welssgarten, 81 Northrop Avenue, Staten Island, New York. This was covered by your 2501 form #22588 of June 8th 1975 covering a PGM-50 serial #740 66-IC00819 which was item number one of our credit memo #28455.
>
> The second was from Mr. Veri, 84 Patton Street, Staten Island, New York. This was covered by your 2501 form #22601 dated May 30th 1975 for a model PEN-40 serial #75067 IM21382...."

Reasons Smith requires that its suppliers provide the correct name and address of end users are that: (1) Smith wishes to protect the consumer by providing the consumer with direct advice of credit paid the distributor and due the consumer

under the Smith warranty and (2) Smith wishes to maintain records from which it can be determined whether any particular heater is within warranty coverage, which is 3 years for commercial users and 10 years for non-commercial.

Keeping in mind that 2501 forms stating customers names, as mentioned in Hall's letter, were submitted by plaintiff many weeks after entry of the May 1, 1975 preliminary injunction order, it will be seen that plaintiff's letter to D.V. Hall of August 27, 1975, admits submitting patently falsified customer information to Smith during the period of the preliminary injunction. The letter of plaintiff to Hall (Exhibit B) states, in part:

> "With reference to your letter of August 14, 1975 regarding warranty claims and customer letters. I must offer you a complete explanation as to the reason for this problem that has arisen ....
>
> [W]e had to deny the sale of units off of Staten Island and therefore all claims sent in were for Staten Island addresses although non existent.
>
> With regard to your letter, we will attempt to find the user's needed for the heaters in question and from now on all information for future claims will be fact,...."

The fact is clear that user information sent to Smith by plaintiff, as on June 8, 1975, and May 30, 1975, has been patently false. Although Mr. Hall's letter (Exhibit D) mentions some four instances of customer information falsified by plaintiff, I am advised by Smith employees that at least a dozen such instances have occurred since May 1, 1975.

7. It is not clear that either Smith or this Court are much helped by plaintiff's representation that "from now on all information for future [warranty] claims will be fact". There is obvious doubt of the reliability of that representation in light of actual practice, particularly since one of the continuing directions to plaintiff in the Court's May 1, 1975 preliminary injunction order is that plaintiff must "reimburse Smith promptly for all service costs as to Smith's products sold by it outside of Staten Island," providing a possible motive for past and future derelictions.

Other Problems

8. The problems of plaintiff's behavior during the period of preliminary injunction stated above, while dispositive of defendant Smith's application here, are illustrative only. Plaintiff has, for example, continued to refuse to pay for service costs on sales outside of Staten Island, despite the provision in the Court's May 1, 1975 order requiring it.

Status of the Action

9. Questions of plaintiff's performance during preliminary injunction would be obviated by trial, which defendant Smith has sought to expedite by proceeding with discovery to the extent plaintiff has permitted it. Plaintiff's skilled counsel has, however, thus far elected not to proceed with

discovery, except for patently defective requests for documents to which defendant Smith and other defendants timely responded in July, 1975. Magistrate Catoggio has, it should be mentioned, diligently prodded plaintiff to proceed with discovery, and plaintiff's skilled counsel is certainly aware of local court rule 4).

WHEREFORE, it is respectfully requested that an order be entered requiring plaintiff to show cause why an order should not be entered herein dissolving the preliminary injunction directed by the Court herein by order dated May 1, 1975, and for such other and further relief as to the Court may seem proper.

Don Allen Resnikoff

Sworn to before me this
4th day of September, 1975.

Joseph P. Giasi, Jr.
Notary Public

JOSEPH P. GIASI, JR.
Notary Public State of New York
No. 24-6505065
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1976

TURK, MARSH, KELLY & HOARE
Attorneys for defendant
A. O. Smith Corporation
666 Fifth Avenue
New York, N.Y. 10019

EXHIBIT A

AMERICAN STANDARD

FOUNDED SISCO 1898

Staten Island Supply Company, Inc.

Plumbing, Heating and Industrial Supplies

1390-1398 RICHMOND TERRACE
STATEN ISLAND 10, N. Y.
TELEPHONE: GIBRALTAR 2-1106

August 27, 1975

Mr. Paul P. Toth
A. O. Smith Corporation
825 Lehigh Avenue
Union, New Jersey 07083

Dear Mr. Toth:

Your letter of August 21st was of no surprise to me, knowing your past actions as they have been. I am drafting a letter, a copy of which will follow, to be mailed to all Distributors and Sub-Distributors in New York and New Jersey, explaining what you and your pawn have been doing with prices and preferential treatment given a certain distributor.

Why don't you resign or ask to be relocated while the chances are still good. Opinion of you and your actions certainly warrants it. This has been echoed by others for various reasons.

I am requesting at this time that a new salesman be assigned to handle our account as Gill is just too uncooperative, to put it mildly, for me to accept as a A. O. Smith representive any longer. It is written all over both of your faces the type of men you two really are.

For three years you have squirmed and attempted every which way, for no legal or good business reason to put the screws to Staten Island Supply Co. Well your fun and games are about over. I refer you to the letter I sent to Dan Hall.

My time and that of my employees in developing the orders for the KEE heaters, is now considered damages and I expect to be compensated for your foul up. No time limit as to the offering, which lasted only a month for us, of the 5% was ever given. The only fact is that I was deceived and denied any better prices for at least one year, when in fact they existed and have been given to your accomplice. You and Gill again lied time and again.

EXHIBIT A

AMERICAN STANDARD

FOUNDED SISCO 1898

Staten Island Supply Company, Inc.

Plumbing, Heating and Industrial Supplies

1390-1398 RICHMOND TERRACE
STATEN ISLAND 10, N. Y.
TELEPHONE: GIBRALTAR 2-1106

This is only one more example of your nonsensical game, for self edification, catching up to you. Simply put as Gill said "Toth likes to show authority".

I am debiting A. O. Smith for the amount shown due us on the invoices I mailed to you as requested.

Very truly yours,

STATEN ISLAND SUPPLY CO., INC.

Robert M. Schwimer
Vice President

RMS/na

EXHIBIT B

AMERICAN STANDARD

FOUNDED SISCO 1898

Staten Island Supply Company, Inc.

Plumbing, Heating and Industrial Supplies

1390-1398 RICHMOND TERRACE
STATEN ISLAND 10, N. Y.
TELEPHONE: GIBRALTAR 2-1103

August 27, 1975

A. O. Smith Corporation
825 Lehigh Avenue
Union, New Jersey 07083
Attention: Mr. D. V. Hall

Dear Mr. Hall:

With reference to your letter of August 14, 1975 regarding warranty claims and customer letters. I must offer you a complete explanation as to the reason for this problem that has arisen. I might state immediately that your boys - Gill and Toth are responsible for the way we handled our claims. We had to continuously deny for the past three years the fact that a number of our sales have been off of Staten Island. This was forbidden by Gill and Toth with threats and finally termination of our distributorship.

In a continuously successful attempt to grow and sell more of A. O. Smith products, we had to deny the sale of units off of Staten Island and therefore all claims sent in were for Staten Island addresses although non existent.

I discussed this with Gill just a month or so ago and told him that one more example of proof positive has shown up that proves their attempts to stop our selling off Staten Island, price fixing and threats to not quote The Brooklyn Union Gas Company.

In addition to the above, these two clowns have toyed with prices in the New York City area, claiming no additional discounts existed, when in fact they did and have forced me to pay for service on heaters in warranty: something unheard of in the industry.

All the above was to protect their little monopoly, involving themselves - George Hutter and Brooklyn Union Gas Company

BEST COPY AVAILABLE

EXHIBIT B

EXHIBIT B

AMERICAN STANDARD

FOUNDED SISCO 1898

Staten Island Supply Company, Inc.

Plumbing, Heating and Industrial Supplies

1390-1398 RICHMOND TERRACE
STATEN ISLAND 10, N. Y.
TELEPHONE: GIBRALTAR 2-1106

Isn't it nice to see how a large corporation can be had by a few of the creeps they employ. I feel that Gill and Toth should be relieved, at the very least, of their positions here in Union. This has been reflected for many reasons by several other A. O. Smith distributors.

Simply put - how would you feel if you and your father worked hard for almost fifteen years representing a company and then with illegal tactics an attempt is made to destroy you and everything you worked for by a few men.

Now their lack of business knowledge is creating a damaging effect on A. O. Smith's name in the New York City area.

To date I have requested, both verbaly and by letter an explanation or policy of A. O. Smith that sets down the rules where by a distributor of yours must pay for warranty service (one year or less). To date I have not even had a reply. Possibly you can forward to me this information.

With regard to your letter, we will attempt to find the user's needed for the heaters in question and from now on all information for future claims will be fact, as we no longer have to hide from Gill and Toth, thanks to the awareness of the Federal Government.

I request at this time that you show this letter to all those.in close contact with Toth, as I have done to every person in the Industry that knows him.

Very truly yours,

STATEN ISLAND SUPPLY CO., IN

Robert M. Schwimer
Vice President

RMS/na

EXHIBIT C

CONSUMER PRODUCTS DIVISION • 825 LEHIGH AVENUE • UNION, NEW JERSEY 07083 • 201 686-9000

A. O. Smith CORPORATION

August 21, 1975

Mr. Robert Schwimer
Staten Island Supply Company
1390 Richmond Terrace
Staten Island, NY 10310

Dear Bob:

I am replying to your letter of August 13, 1975, to me in which you requested that an enclosed number of invoices for sales of KEE water heaters to sub-wholesalers be honored under our special 5 percent discount price.

It is apparent from your letter that these invoices are for future delivery and that the units as yet have not been purchased from A. O. SMITH. As stated in my letter of August 6, 1975, this special price terminated on August 15, 1975. Bernie Gill called you from my office on August 15, 1975, and explained that the 5 percent discount from A. O. SMITH on the subject invoices would only apply if you were to order for immediate shipment enough KEE water heaters to equal the number of units on the invoices. As of Monday, August 18, 1975, we had not received any orders from you for KEE water heaters marked for immediate shipment.

It is not possible for us to give you special consideration which we could not give other distributors. Therefore, I have to deny your request on the enclosed invoices.

Very truly yours,

A. O. SMITH CORPORATION

Paul

Paul P. Toth
Regional Sales Manager
Consumer Products Division

PPT:pas

cc: B. L. Gill
E. C. Michaud
D. Resnickoff
J. Johnson

EXHIBIT C(1)

EXHIBIT C

ER PRODUCTS DIVISION • 825 LEHIGH AVENUE • UNION, NEW JERSEY 07083 • 201 686-9000

A. O. Smith CORPORATION

August 6, 1975

Mr. Robert Schwimer
Staten Island Supply
1390 Richmond Terrace
Staten Island, NY 10310

Dear Bob:

This is to notify you that as of August 15, 1975, we are discontinuing the special 5 percent discount price given to you on sales to subwholesalers of five year A. O. SMITH residential water heaters.

All final claims with supporting invoices should be sent to A. O. SMITH by September 15, 1975.

Very truly yours,

A. O. SMITH CORPORATION

Paul

Paul P. Toth
Regional Sales Manager
Consumer Products Division

PPT:pas

cc: B. L. Gill
E. C. Michaud

EXHIBIT C(2)

EXHIBIT D

cc: P. H. Fahrer – Chicago
P. P. Toth – Union
B. L. Gill

August 14th 1975

Staten Island Supply Company
1390 Richmond Terrace
Staten Island, New York 10310
Attention: Mr. Robert Schwimmer

Dear Mr. Schwimmer:

We have recently noticed an increase in the return of water heater warranty restriction letters from your end user customers. These letters, as you know, are sent out after we issue credit to Staten Island Supply, advising the customer of the warranty restriction on the new heater. We, therefore, require that you supply us with the correct name and address, in order that our warranty restriction letter can be sent on to the proper end user.

The first one we received back was from Mr. Weissgarten, 81 Northrop Avenue, Staten Island, New York. This was covered by your 2501 form #22586 of June 8th 1975 covering a PGH-50 serial #740 66-1C00819 which was item number one of our credit memo #28455.

The second was from Mr. Veri, 84 Patton Street, Staten Island, New York. This was covered by your 2501 form #22631 dated May 30th 1975 for a model PEN-40 serial #75067 IF21322.

The third one was from Mr. Smith, 587 Branch Terrace, Staten Island, New York. This was covered by your 2501 form #22587 for a PGD-40 serial #780 C7535027. This was item number one of credit memo #28365 of June 14th 1975.

The fourth was from Mr. Palent, 332 Carpo Place, Staten Island, New York. This was covered by your 2501 form #22585 for a model PGD-65 serial #77070 IF05613.

– Please turn to page two –

EXHIBIT D

Immediately upon receipt of the correct names and address, we will send a new letter out. However, if such information is not forthcoming in thirty days, we will have no alternative but to cancel our credit for these heaters.

Very truly yours,

A. O. SMITH Corporation

D. V. Hall
Manager - Eastern Branch
Product Service Division

DVH:wjc

Attachment: Copies of letters and envelopes

DOCUMENT FOR FILING DATED SEPTEMBER 8, 1975
(COPY OF LETTER OF DON ALLEN RESNIKOFF, ESQ., OF TURK, MARSH, KELLY & HOARE, ATTORNEYS FOR DEFENDANT A. O. SMITH CORPORATION TO LOUIS C. PULVERMACHER, ESQ., ATTORNEY FOR PLAINTIFF)

COPY

TURK, MARSH, KELLY & HOARE
666 FIFTH AVENUE
NEW YORK, N.Y. 10019

GILBERT FREI
CARTER T. LOUTHAN
ALEXANDER L. CACCIA
GEORGE B. SNELL
HUYLER C. HELD
JOHN ANTHONY SMITH
JOHN G. PALACHE, Jr.
PAUL F. NASH
G. PETER GROSS
DON ALLEN RESNIKOFF
RALPH E. LERNER

DAVID KELLY
L. RANDOLPH MASON
EDWARD E. WATTS, Jr.
HARRY A. LEIGH
EDWARD M. CAMERON, Jr.
COUNSEL

CABLE ADDRESS
"MELOPOELA"
TEL. 765-5900
"AREA CODE 212"

September 8, 1975
B2757

Re: Staten Island Supply Co., Inc. v.
A. O. Smith Corporation, et al.

Louis C. Pulvermacher, Esq.
410 Park Avenue
New York, N. Y. 10022

Dear Mr. Pulvermacher:

As you know, Smith's Order to Show Cause concerning your client's disparagement of Paul Toth and Bernie Gill as agents of Smith is returnable on Friday, September 19, 1975, before Judge Platt.

As you also know, the relief sought by Smith's Order to Show Cause is for the Court's control of its own order, and no injunctive relief against libel as such was requested.

Although I assume the letters of plaintiff were mailed without your knowledge, and the publication of disparaging statements mentioned in the letters made without your approval, I respectfully request and urge that you instruct your client against further similar publications. See Jiminez v. Maritime Overseas Corp., 360 F. Supp. 142, 144 (S.D.N.Y., 1973); Cole Fischer Rogow, Inc. v. Carl Ally, Inc., 29 A.D. 2d 423, 288 N.Y.S. 2d 556, 562 (1st Dept.), aff'd 25 N.Y. 2d 943, 305 N.Y.S. 2d 154, 252 N.E. 2d 633 (1968); Berkson v. Time, Inc., 8 A.D. 2d 352, 187 N.Y.S. 2d 849, 853 (1st Dept.), aff'd 7 N.Y. 2d 1007, 200 N.Y.S. 2d 51, 166 N.E. 2d 847 (1959).

I would appreciate it also if you would instruct your client on Smith's policies concerning warranty service, since your client's letter of August 27, 1975 to D. V. Hall says that he is unfamiliar with Smith's policies. Smith's policy was stated by Paul Toth at the preliminary injunction hearing, and appears at page 37 of the transcript of the April 11, 1975 hearing as follows:

"Q. Do you know whether the Smith contract requires distributors to provide service?

A. Yes, I do.

Q. Does it?

A. Yes, it does.

Q. Are there instances where that service requirement is waived, do you know?

A. Yes.

Q. Was it waived on Staten Island?

A. Yes.

Q. To what extent was it waived?

A. A. O. Smith for the first year on residential water heaters will pay for and perform the service as far as any product malfunction, nothing to do with installation.

Q. Why was it waived on Staten Island?

A. Because of the competitive situation, we felt this was necessary for us to get sales for Staten Island.

Q. Was the service requirement waived in the geographic area of Brooklyn?

A. No, it was not.

Q. Why not?

A. Because in that area, through our present distribution he provides his own service."

Very truly yours,

Don Allen Resnikoff

DAR:baa

cc: Hon. Thomas C. Platt

AFFIDAVIT OF PAUL TOTH IN SUPPORT
OF ORDER TO SHOW CAUSE AND
EXHIBITS A-C

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- -X

STATEN ISLAND SUPPLY COMPANY, INC., :

Plaintiff, : AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE

- against - : 75 Civ. 461

A. O. SMITH CORPORATION, EQUIPMENT DISTRIBUTORS CORP. and BROOKLYN UNION GAS COMPANY, :

Defendants. :

- -X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, PAUL TOTH, being duly sworn, depose and say:

1. I am Regional Manager of defendant A. O. Smith Corporation ("Smith"), familiar with dealings between plaintiff and Smith, and make this affidavit in support of the order to show cause issued by the Court on behalf of Smith and returnable September 19, 1975, and requiring plaintiff to show cause why an order should not be entered herein dissolving the preliminary injunction directed by the Court herein by order dated May 1, 1975, and for such other and further relief as the Court may consider proper.

Facts in counsel's affidavit

2. I have reviewed the affidavit of Don Allen Resnikoff sworn to September 4, 1974 in support of Smith's order to show cause, and state that the facts stated in that affidavit are correct.

Service deductions by plaintiff

3. As shown by the letter of G. I. Hurst, Credit Manager of Smith, to plaintiff, which letter is dated September 4, 1975, and annexed hereto as Exhibit A, plaintiff has deducted from its January check 9538 to Smith the amount of $180, and from its April check 9995 the amount of $270, representing bills for service work which are not allowable deductions because they represent service done outside of Staten Island. Copies of the service bills, the amounts of which were deducted by plaintiff, are annexed hereto as Exhibits B(1) through B(23). Upon information and belief these unauthorized deductions by plaintiff are similar to those concerning which Robert Schwimer testified at the preliminary injunction hearing that plaintiff was willing to pay, and are subject to the Court's direction in its order of May 1, 1975, that "plaintiff shall not...(2) refuse to reimburse SMITH promptly for all service costs as to Smith's products sold by it outside of Staten Island".

Wrongful deductions based on March pricing

4. As shown in the letter of G. I. Hurst, annexed as Exhibit A, "$63.50 was deducted from Invoice 7175081270 and $215.50 from Invoice 7175081260 for March pricing. To be eligible for March pricing orders were to be received on or before March 14. These orders were dated March 22. Consequently, they were billed at April prices and the total debits of $279 should be repaid." A copy of the price sheet effective in March, 1975 (the price sheet dated August 15, 1974) is annexed as Exhibit C(1), and the letter of Smith announcing price increases effective April 1, 1975 is annexed as Exhibit C(2); a copy of Invoice 7175081270 is annexed as Exhibit C(3); and a copy of Invoice 7175081260 is annexed as Exhibit C(4).

Unauthorized deduction of 5% discount

5. Notwithstanding the advice contained in my letter to plaintiff of August 21, 1975, attached as Exhibit C(1) to the supporting affidavit of Don Allen Resnikoff sworn to September 4, 1975; and the notice dated August 6, 1975 attached to the same affidavit as Exhibit C(2), plaintiff has

improperly deducted the amount of $609.62 from its remittance due Smith on August 15, 1975.

Paul Toth

Sworn to before me this
10th day of September, 1975.

Joseph P. Giasi Jr.
Notary Public

JOSEPH P. GIASI, JR.
Notary Public State of New York
No. 24-6505065
Qualified in Kings County
Certificate Filed in New York County
Commission expires March 30, 1976

EXHIBIT A

bc Mr. D. A. Resnikoff
Turk, Marsh, Kelly & Hoare

E. C. Michaud
Paul Toth - Union, NJ

September 4, 1975

AIR MAIL

Mr. Robert M. Schwimer
Staten Island Supply Company, Inc.
1390 Richmond Terrace
Staten Island, New York 10310

Dear Mr. Schwimer:

Our letter concerns several outstanding debit memos on your August 31 statement.

First, $180 was deducted from January Check 9538 and $270 from April Check 9995 (see attached). These attachments represent service work which are not allowable deductions. Therefore, we are requesting they be repaid with your September 15 remittance.

Secondly, $63.50 was deducted from Invoice 7175081270 and $215.50 from Invoice 7175081260 for March pricing. To be eligible for March pricing orders were to be received on or before March 14. These orders were dated March 22. Consequently, they were billed at April prices and the total debits of $279 should be repaid.

We have discussed with Dorothy Debit Memo 9397 for $91, which is a double deduction, and should also be repaid.

These items have been on our books for some time, so we would like them repaid by the 15th. If not, it will be necessary to review orders for shipment.

Very truly yours,

A. O. SMITH Corporation
Consumer Products Division

G. I. Hurst
Credit Manager

GIH:ic
Atts.

EXHIBIT B(1)

Island Lumber Sales
Bob Blutman
3/18/93

No. 7587 Dept. Date 19

Name R. E. Hunt (Jacobsen)

Address 110 Sasanan Neck Rd, Wintha, N.Y. 11/2/93

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT	

QUAN.	DESCRIPTION	PRICE	AMOUNT
	Michelles Restaurant		
	53 E 45 St		
	N/A N/A		
	BTS 9 72 792 74 21937		
	Complaint: Insufficient		
	Hot Water		
	Found two 1/8 leaks		#27.00
	being used from 1 hour		
	almost running		
	continually for washing		
	dishes silverware and		
	vegetables. Draw on		
	the 5 gallons per minute		
	constantly. Owner was told		
	by plumber he could run water		
	constantly and never run out.		
	Electric Water Heater makes 1/2 gal per min		
	Heater undersized		#27.00

KEEP THIS SLIP FOR REFERENCE

Uniform 31122

Exhibit B(1)

BEST COPY AVAILABLE

EXHIBIT B (2)

Staten Island Plumbing Supply
Att: Bob Schuman

No. 7590 Dept. _____ Date _____ 19 ____

Name R. F. Hunt (Jackson)

Address 1150 Seaman Neck Rd Wantagh NY 1179

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	HOSE REID.	PAID OUT	

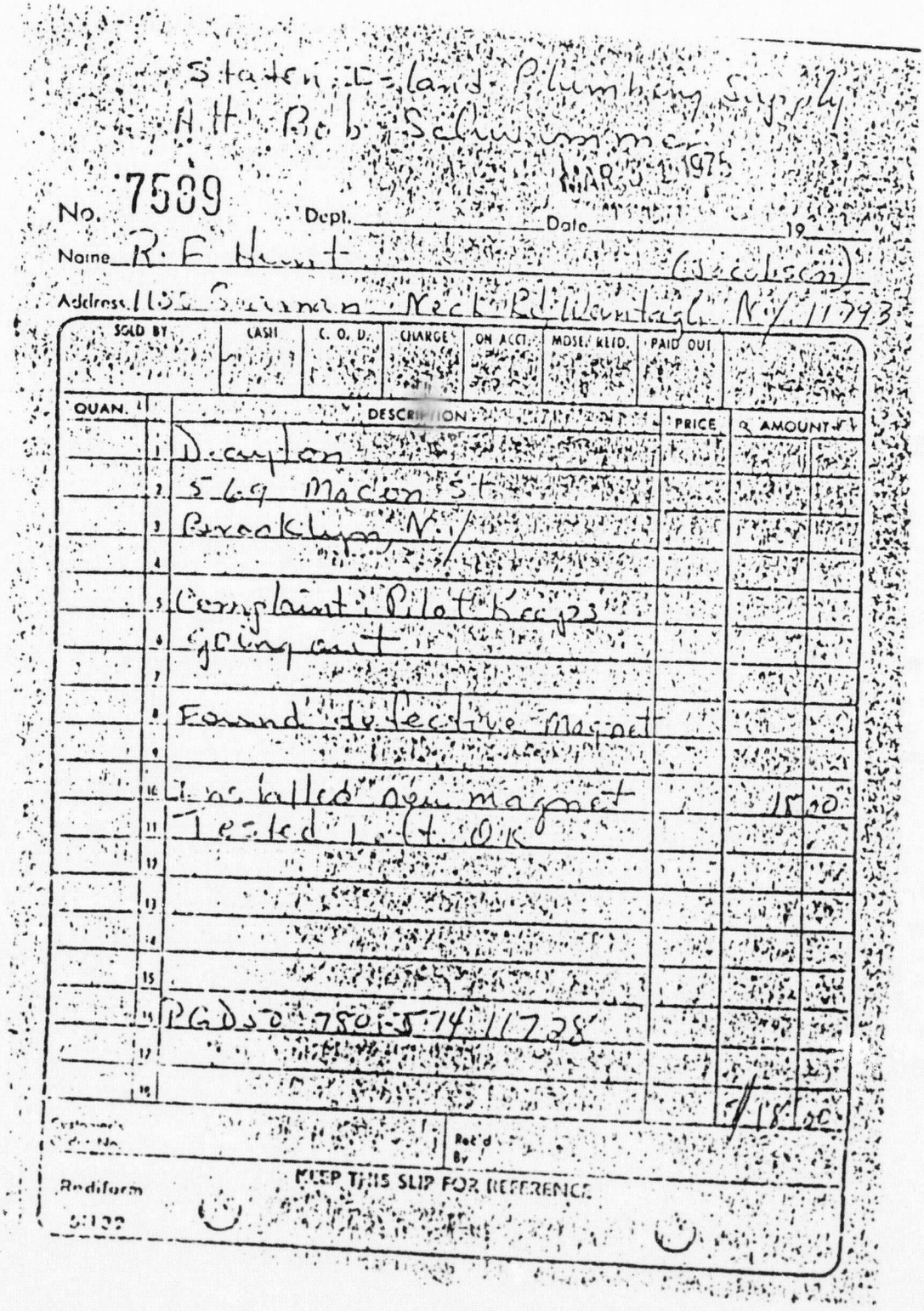
QUAN.	DESCRIPTION	PRICE	AMOUNT
1	Cooper		
2	251-10 Northern Blvd		
3	Little Neck NY		
4	PG 130 780 F 74 13748		
5			
6	Heater fired with natural		
7	gas spud instead of L.P. orifice		
8	Heater burnt up on foot from		
9	bottom all around. New L.P. Conte/		
10	passing gas Advised S.I. Supply		
11	of parts needed to fix heater.		
12	I was told to hold up on		
13	repairs until a decision was		
14	made.		
15			
16			
17			
18			$18.00

Customer's Order No. | Rec'd By

KEEP THIS SLIP FOR REFERENCE

Rediform SH 32

BEST COPY AVAILABLE



Staten Island Plumbing Supply
Att: Bob Schwimmer

MAR 5 1975

No. 7589 Dept. _____ Date _____ 19__

Name R. E. Hunt (Accolade)

Address 1155 Sussman Rec'd Rel Wantagh N.Y. 11793

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RET'D.	PAID OUT	

QUAN.		DESCRIPTION	PRICE	AMOUNT
	1	Decton		
	2	569 Macon St		
	3	Brooklyn N.Y.		
	4			
	5	Complaint: Pilot keeps		
	6	going out		
	7			
	8	Found defective Magnet		
	9			
	10	Installed new magnet		15 00
	11	Tested Unit OK		
	12			
	13			
	14			
	15			
	16	PGD's 750 : 574 11728		
	17			
	18			15 00

Customer's Order No. | Rec'd By

KEEP THIS SLIP FOR REFERENCE

Rediform 51122

Staten Island Plumbing Supply Co.
H. H. Rubenschimmer

No. 7567 Dept. _____ Date _____ 19

Name R. E. Hurst (Jacobsen)

Address 150 Seaman Neck Rd Woodbridge N.J. 07095

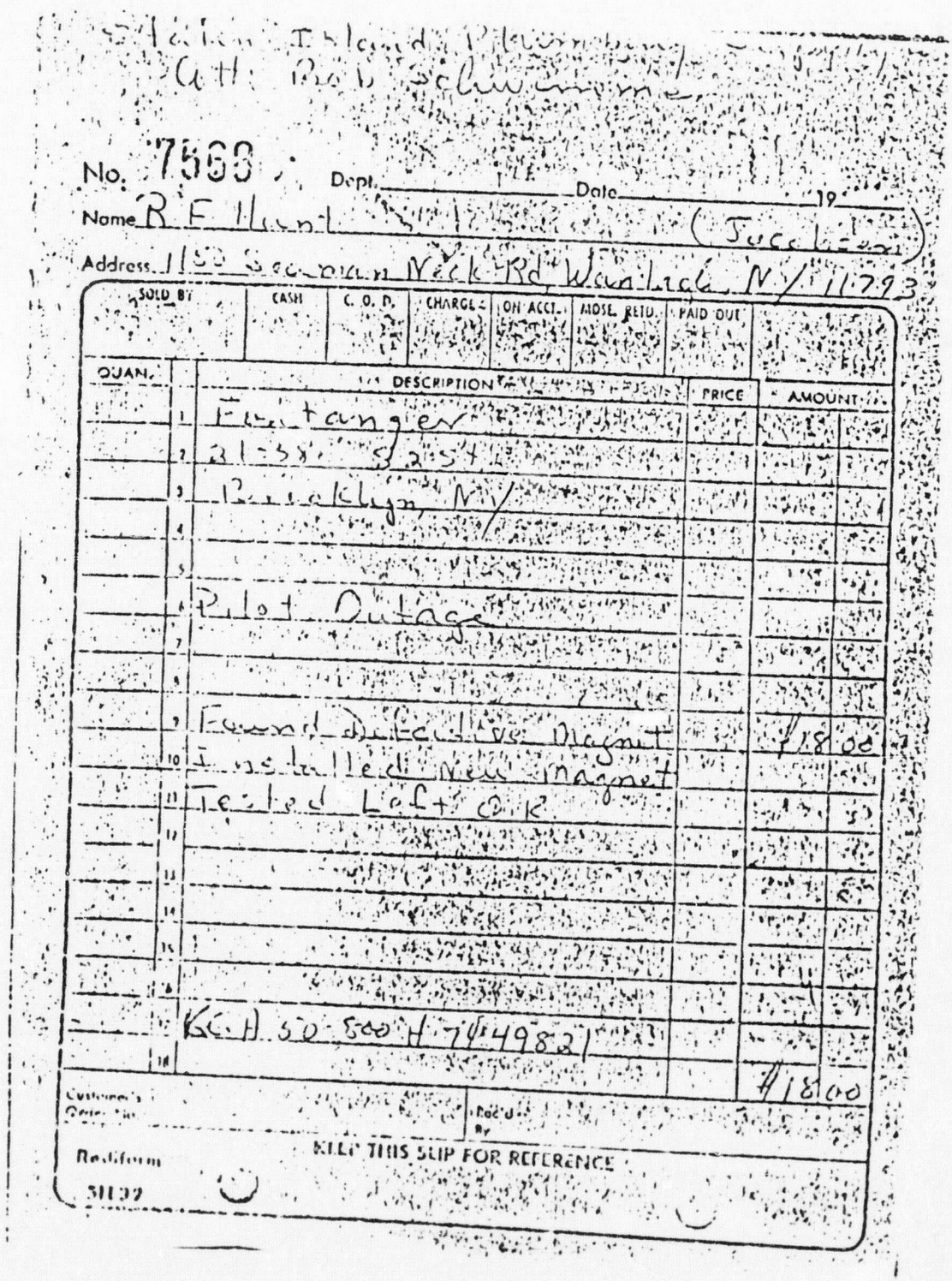
SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT	

QUAN.		DESCRIPTION	PRICE	AMOUNT
	1	Verbrimer		
	2	76-34 169 St		
	3	Flushing N.Y.		
	4			
	5			
	6	Cracked Burner		
	7			
	8			
	9	Installed new Burner		$18 00
	10	and Burner Tube		
	11	Tested Left OK		
	12			
	13	PGD SC-780-S 741239		
	14			
	15			
	16			
	17			
	18			$18 00

Customer's Order No. _____ Rec'd By _____

KEEP THIS SLIP FOR REFERENCE

Redform 5113?



Atlantic Island Electronics
Cathode Ray Exchange

No. 7568 Dept. _____ Date _____ 19__

Name R E Hunt (Success)

Address 1150 Seaman Neck Rd Woodbridge NY 11793

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT	

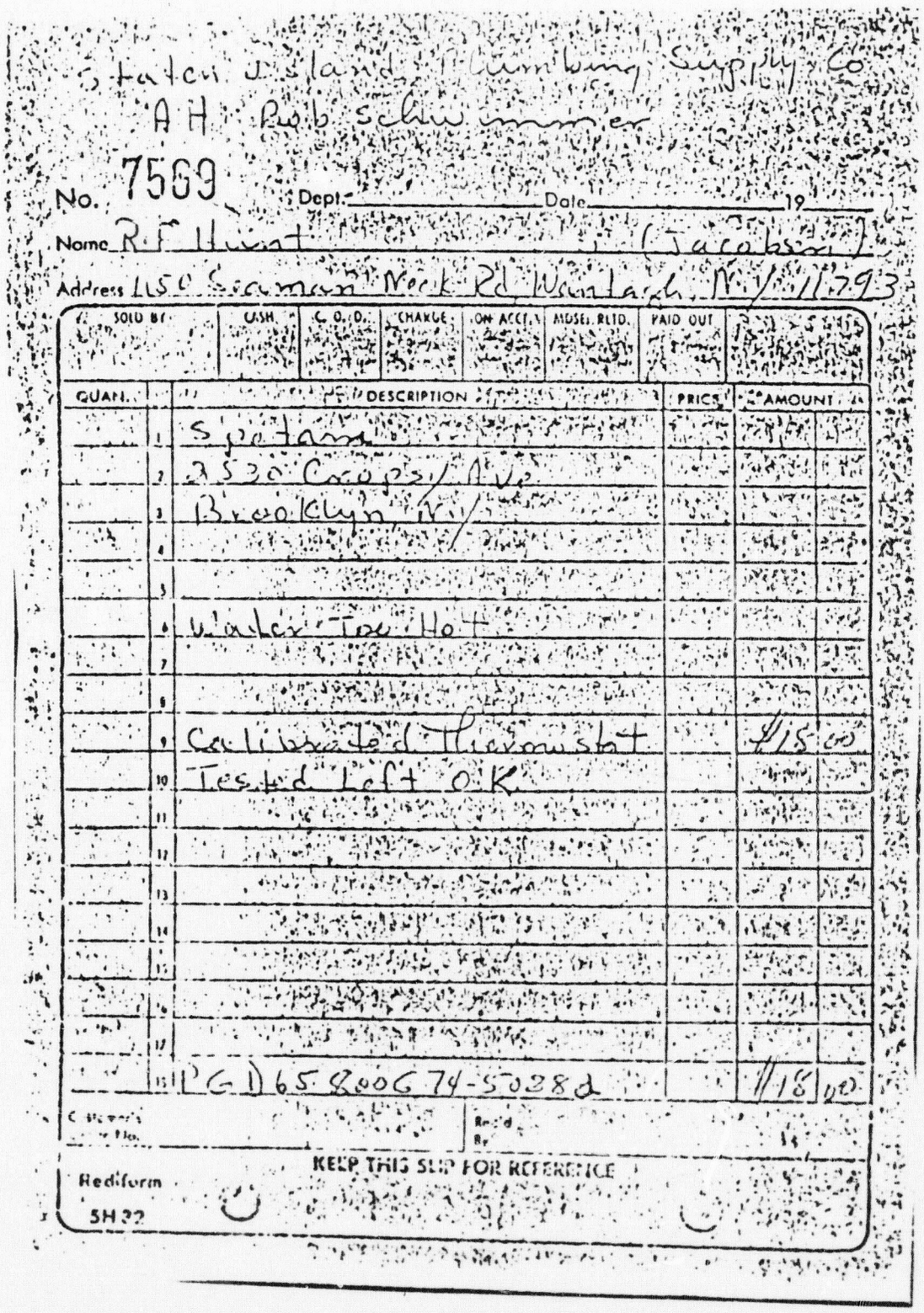
QUAN.	DESCRIPTION	PRICE	AMOUNT
1	Fun tangen		
2	31-55 52-54		
3	Brooklyn NY		
4			
5			
6	Pilot Outage		
7			
8			
9	Found defective Magnet		18 00
10	Installed New Magnet		
11	Tested Left OK		
12			
13			
14			
15			
16			
	KCH SQ 500 H 7#49821		
18			18 00

Customer's Order No. Rec'd By

Redi-form 3H32

KEEP THIS SLIP FOR REFERENCE

EXHIBIT B(6)



Staten Island Plumbing Supply Co
A H Rubschlummer

No. 7569 Dept. _____ Date _____ 19 ____

Name R F Hunt (Jacobsen)

Address 1150 Seaman Neck Rd Woodbridge N J 07095

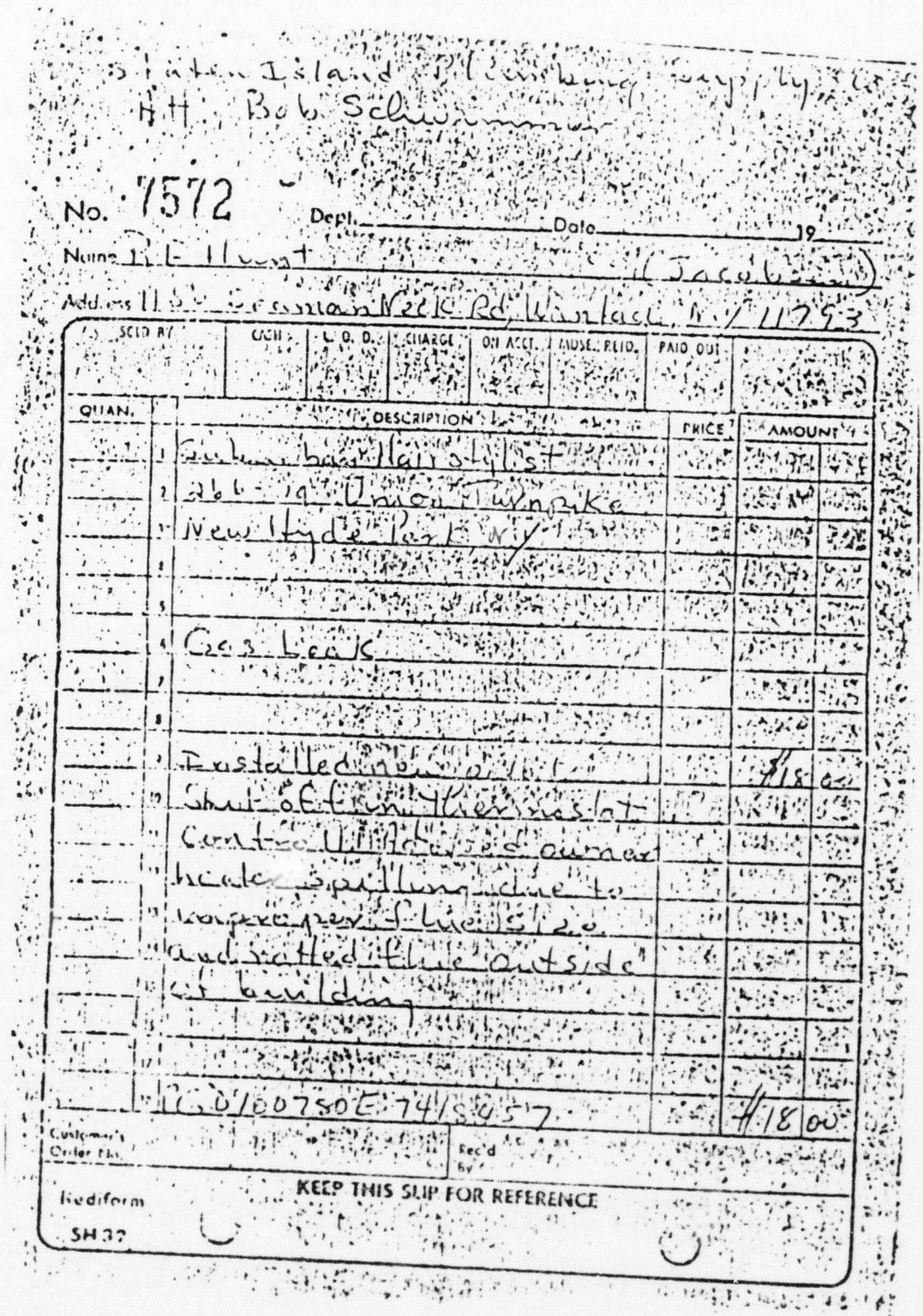
SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RTD.	PAID OUT	

QUAN.		DESCRIPTION	PRICE	AMOUNT	
	1	Spetans			
	2	3530 Cooper Ave			
	3	Brooklyn N.Y.			
	4				
	5				
	6	Watts Tee Hdt			
	7				
	8				
	9	Calibrated Thermostat		11	15 00
	10	Tested Left O.K.			
	11				
	12				
	13				
	14				
	15				
	16				
	17				
	18	PGD 65 800674-5028d		11	18 00

Customer's Order No. | Received By

KEEP THIS SLIP FOR REFERENCE

Rediform 5H32



Staten Island [illegible] by
Att: Bob Schwimmer

No. 7572 Dept. Date 19

Name [illegible] (Jacobi)

Address [illegible] Sussman Neck Rd Wantagh N.Y. 11793

SOLD BY | CASH | C. O. D. | CHARGE | ON ACCT. | MDSE. RETD. | PAID OUT

QUAN.		DESCRIPTION	PRICE	AMOUNT
	1	Customer hair styles		
	2	266-19 Union Turnpike		
	3	New Hyde Park N.Y.		
	4			
	5			
	6	Gas leak		
	7			
	8			
	9	Installed new outlet		118 00
	10	Shut off from the main lot		
	11	Contact Unlocated owner		
	12	heat spilling due to		
	13	vaporizer shield [illegible]		
	14	and settled the outside		
	15	of building		
		[illegible] 0/100750E 741 8057		118 00

Customer's Order No. | Rec'd by

KEEP THIS SLIP FOR REFERENCE

Tiedeform SH32

Staten Island Plumbing Supply Co
Att: Bob Schwimmer

No. 7571 Dept. _____ Date _____ 19 _____

Name R.E. Hunt (Cascom)

Address 150 Seaman Rock Rd, Wantagh, N.Y. 11793

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT	

QUAN.		DESCRIPTION	PRICE	AMOUNT
	1	Casamia Restaurant		
	2	409 W. 39 St		
	3	N.Y., N.Y.		
	4			
	5			
	6	HW 670-200 Gal Tank		
	7	found "L" pipe installed		
	8	between Heater and Tank,		
	9	Tank installed in Front		
	10	of heater, heater controlls		
	11	inaccessible, Shertin		
	12	wiring to Tank aquastat		
	13	Flow switch not used		
	14	in circuit,		
	15	Customer told to relocate Tank		
	16	install new 1" pipe where in		
	17	Flow switch correctly install		
		Pressure Valve on rear of boiler		

HW 670 6905 70432

2 hours Time @ 35.00 = 70.00

KEEP THIS SLIP FOR REFERENCE

Rediform SH32

Exhibit B(8)

BEST COPY AVAILABLE

EXHIBIT B(9)

Staten Island Plumbing Supply Co.
Attn: Bob Schwimmer

No. 7584 Dept. _____ Date _____ 19 ____

Name R. F. Hunt (Jacobsen)

Address 1150 Seaman Neck Rd, Westbury, N.Y. 1179

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT	$

QUAN.		DESCRIPTION	PRICE	AMOUNT	
	1	Kutler			
	2	7221 Ave. M			
	3	Brooklyn, N.Y.			
	4				
	5				
	6	½ Hot Water			
	7				
1	8	Found defective thermostat		18	00
1	9	Installed New thermostat			
	10	Tested left O.K.			
	11				
	12				
	13				
	14				
	15				
	16				
	17				
	18	P.O. 75-811-N50674 00309		18	00

Customer's Order No. | Rec'd By

KEEP THIS SLIP FOR REFERENCE

Rediform 51132

Exhibit B(9)

EXHIBIT B(10)

No. 7573 Dept. _____ Date _____ 19 _____

Name R E Hunt (Goodsen)

Address 15 Sherman Neck Rd, Manlasa N.Y. 11793

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT	
			✓				

QUAN.		DESCRIPTION	PRICE	AMOUNT	
	1	Mandarin Restaurant			
	2	532-21 Flatlands Ave			
	3	Brooklyn N.Y.			
	4				
	5				
	6	No hot Water			
	7				
	8	Found water in main		$27	00
	9	burners and Pilot Line			
	10	removed main burners			
	11	disassembled pilot Inst'l'd			
	12	new pilot orifice Corrected			
	13	millivoltage short on gas			
	14	Valve			
	15	Tested left O.K			
	16				
	17				
	18	BT 194-730 R-74/60196		$97	00

Customer's Order No. _____ Rec'd By _____

KEEP THIS SLIP FOR REFERENCE

Redi-form SH 37

Staten Island Supply
Att: Bob Schwimmer

No. 7585 Dept. _____ Date _____ 19 _____

Name R.F. Hunt (Jacobsen)

Address 1150 Seaman Neck Rd, Wantagh, N.Y. 11793

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT	

QUAN.		DESCRIPTION	PRICE	AMOUNT	
	1	Finest Supermarkets			
	2	530 Jericho Turnpike			
	3	Mineola, N.Y.			
	4				
	5				
	6	No Hot Water			
	7				
	8	Found defective upper		18	00
	9	thermostat			
	10	Installed new thermostat			
	11	Advised customer recovery			
	12	on heater and advised			
	13	to have defective running			
	14	Faucets fixed			
	15				
	16				
	17				
	18	Ren 12x 28x H 74 23913		18	00

Customer's Order No. _____ Rec'd By _____

KEEP THIS SLIP FOR REFERENCE

Rediform SH 32

Exhibit B(11)

Staten Island Plumbing Supply
Att: Bob Schwimmer

No. 7574 Dept. _____ Date _____ 19 _____

Name R E Hunt (Jacobsen)

Address 150 Seaman Neck Rd Woodbury N.Y. 11797

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT	

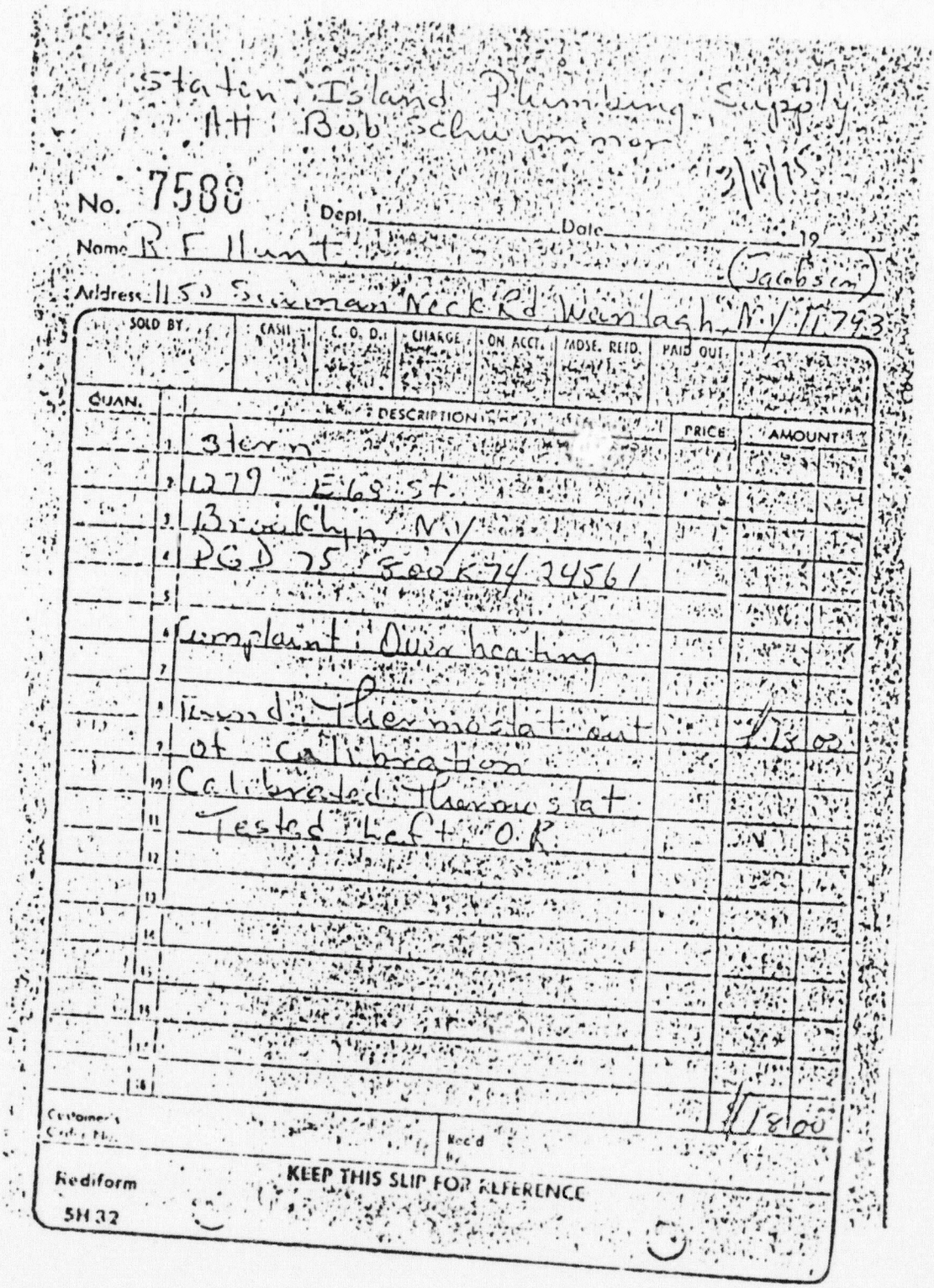
QUAN.		DESCRIPTION	PRICE	AMOUNT	
	1	Kliegerman			
	2	2 Ten Harbor			
	3	West Islip, N.Y.			
	4				
	5	Central Light Heater			
	6				
	7				
	8	Found heater improperly		11	27 00
	9	wired circulator			
	10	not wired in system			
	11	not tank aquastat to			
	12	Central heater or Circulator			
	13	heater & tank improperly			
	14	piped. Advised			
	15	plumber of same			
		1350-80 6905		11	27 00

Customer Order No. | Rec'd By

KEEP THIS SLIP FOR REFERENCE

Redi-Form SH137

Exhibit B(12)



Staten Island Plumbing Supply
Att: Bob Schwimmer
3/18/75

No. 7588 Dept. Date 19

Name R F Hunt (Jacobsen)

Address 150 Sussman Neck Rd Wantagh N.Y. 11793

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT	

QUAN.	DESCRIPTION	PRICE	AMOUNT
	Stern		
	1279 E 69 St.		
	Brooklyn N.Y.		
	PGD 75 Book 74 2456		
	Complaint: Over heating		
	Found Thermostat out		1 13 00
	of Calibration		
	Calibrated Thermostat		
	Tested Left O.K.		
			1 13 00

Customer's Card No. Rec'd By

Rediform 5H 32

KEEP THIS SLIP FOR REFERENCE

EXHIBIT B(4)

Staten Island Plumbing Supply
A.H. Bob Schwimmer

No. 7563 Dept. _____ Date January 1 1975

Name R Hunt (Jacobsen)

Address 1150 Seaman Neck Rd Bldg E Wantagh N.Y.

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RTD.	PAID OUT	1178 3
				STATEN ISLA		SUPP	Y CO

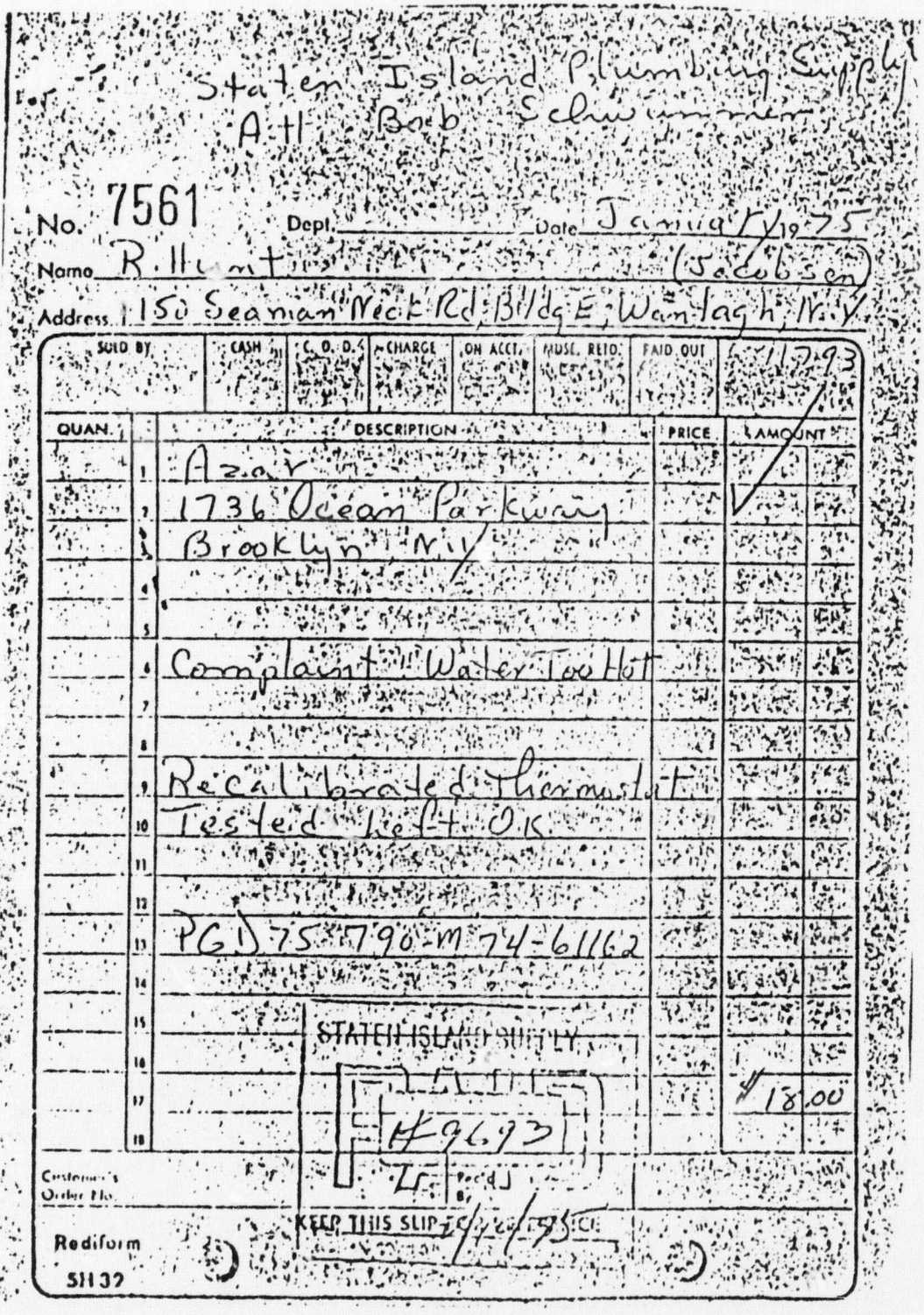
QUAN.		DESCRIPTION	PRICE	AMOUNT
	1	Kenny		
	2	225 65th St	#96 93	
	3	Brooklyn N.Y.		
	4		Pd 7/10	
	5			
	6	Complaint: Pilot Outage		
	7	No Hot Water		
	8			
	9			
	10	Installed new thermostat		
	11	advised plumber to		
	12	install proper flue pipe		
	13	size.		
	14			
	15	PGD40780 S74058041		
	16			
	17			7/18
	18			

Customer's Order No. _____ Rec'd By _____

KEEP THIS SLIP FOR REFERENCE

Rediform 5H32

EXHIBIT B(15)



Staten Island Plumbing Supply
Att Bob Schwimmer

No. 7561 Dept. _____ Date January 1975

Name Rilmit (Jacobsen)

Address 150 Seaman Neck Rd; Bldg E; Wantagh, N.Y.

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT	11293

QUAN.		DESCRIPTION	PRICE	AMOUNT
	1	Azar		
	2	1736 Ocean Parkway		
	3	Brooklyn, N.Y.		
	4			
	5			
	6	Complaint: Water Too Hot		
	7			
	8			
	9	Recalibrated Thermostat		
	10	Tested Left OK		
	11			
	12			
	13	PGD 75 790-M 74-61162		
	14			
	15	STATEN ISLAND SUPPLY		
	16			
	17	#9693		18.00
	18			

Customer's Order No. _____ Received by _____

KEEP THIS SLIP 2/4/75

Rediform 5H32

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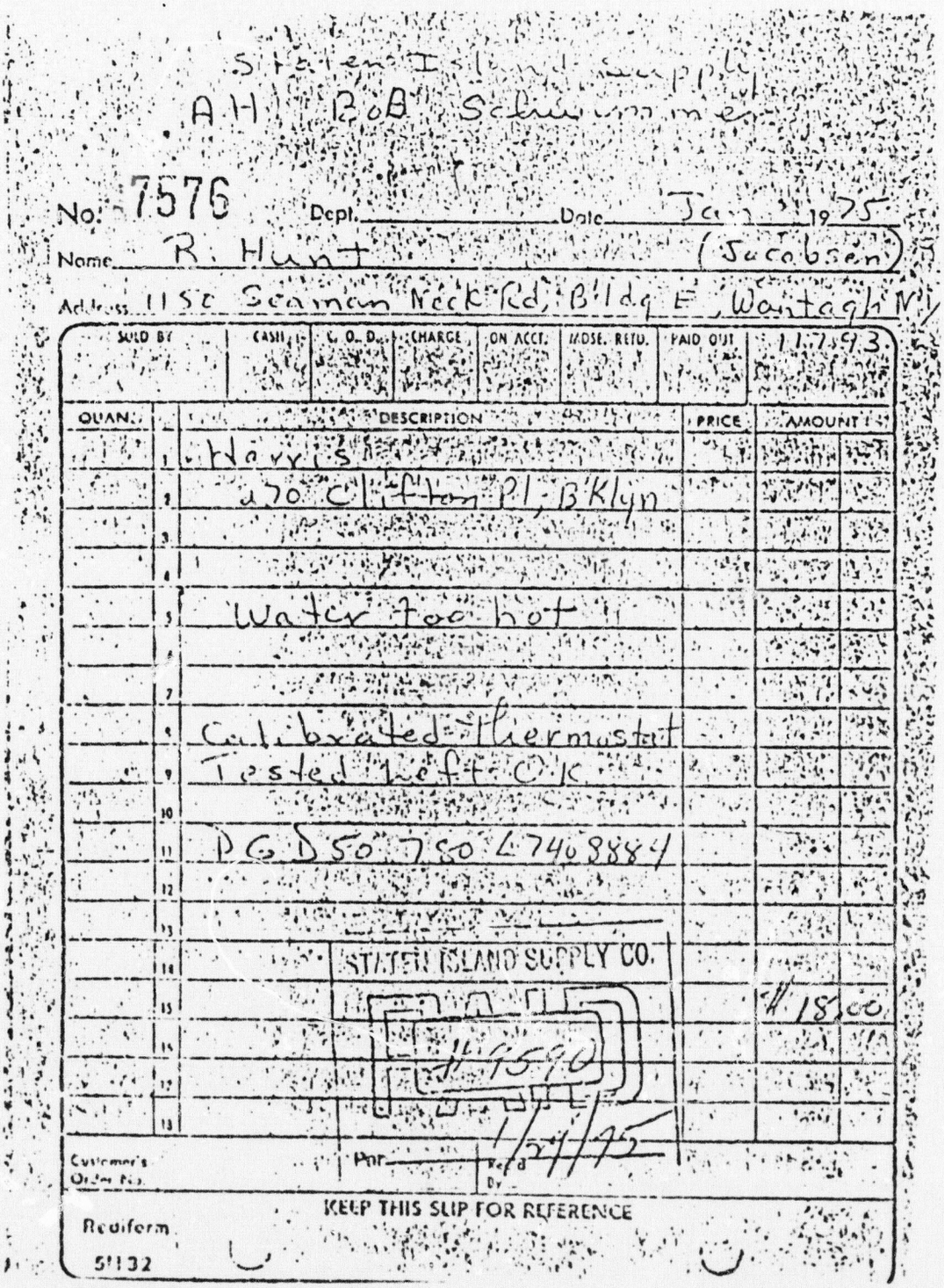
EXHIBIT B(16)



Staten Island Supply
A H BoB Schwarzmer

No. 7576 Dept. _____ Date Jan 1975

Name R. Hunt (Jacobsen)

Address 1150 Seaman Neck Rd, Bldg E, Wantagh N.Y.

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT	11.7.93.

QUAN.		DESCRIPTION	PRICE	AMOUNT
	1	Harris		
	2	270 Clifton Pl, B'klyn		
	3			
	4			
	5	Water too hot		
	6			
	7			
	8	Calibrated thermostat		
	9	Tested Left OK		
	10			
	11	PGD50 750 L746884		
	12			
	13			
	14	STATEN ISLAND SUPPLY CO.		
	15			#18.00
	16	#1590		
	17			
	18	1/24/95		

Customer's Order No. Per Rec'd By

KEEP THIS SLIP FOR REFERENCE

Realform 5H32

BEST COPY AVAILABLE

EXHIBIT B(17)

Staten Island Supply
Att Bob Schwimmer

No. 7577 Dept. _____ Date Jan 1975

Name R. Hunt (Sacoksen)

Address 1150 Seaman's Neck Rd, Bldg L, Wantagh, N.Y.

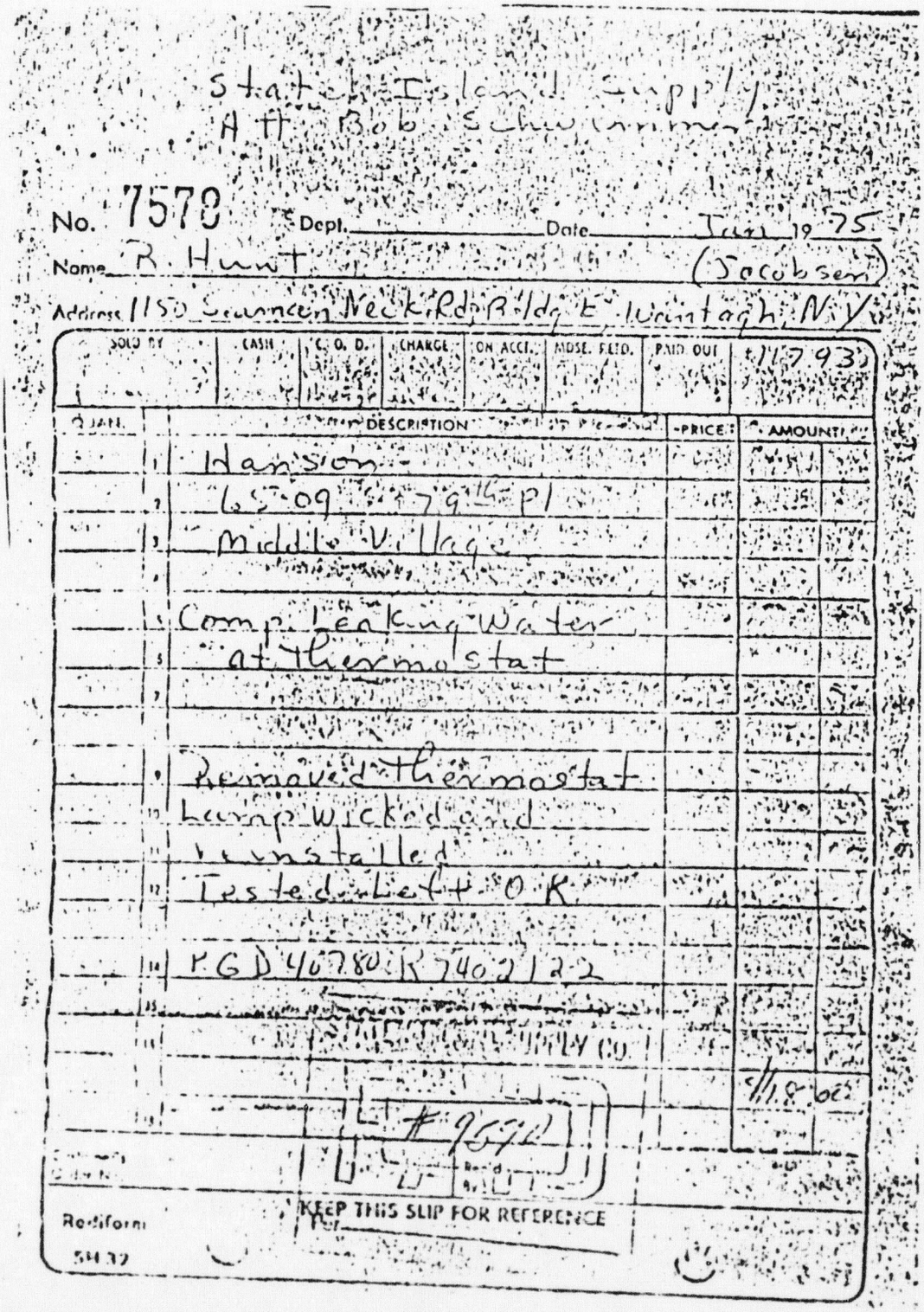
SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT	11793

QUAN.		DESCRIPTION	PRICE	AMOUNT
	1	Arthur Baker		
	2	16 Fawn Croft La		
	3	Dix Hills Wrong Address		
	4	20 Thorn Grove La		
	5	Dix Hills		
	6			
	7	Comp: Water Too hot		
	8			
	9			
	10	Calibrated thermostat		
	11	Tested beft O.K.		
	12			
	13	PGD65-810M74 57334		
	14			
	15	STATEN ISLAND SUPPLY CO.		
	16			$18.00
	17	9570		
	18			

Customer's Order No. Checked By

KEEP THIS SLIP FOR REFERENCE

Rediform 5H32



State Island Supply
Att Bob Schwimmer

No. 7578 Dept. _____ Date July 19 75

Name R. Hunt (Jacobsen)

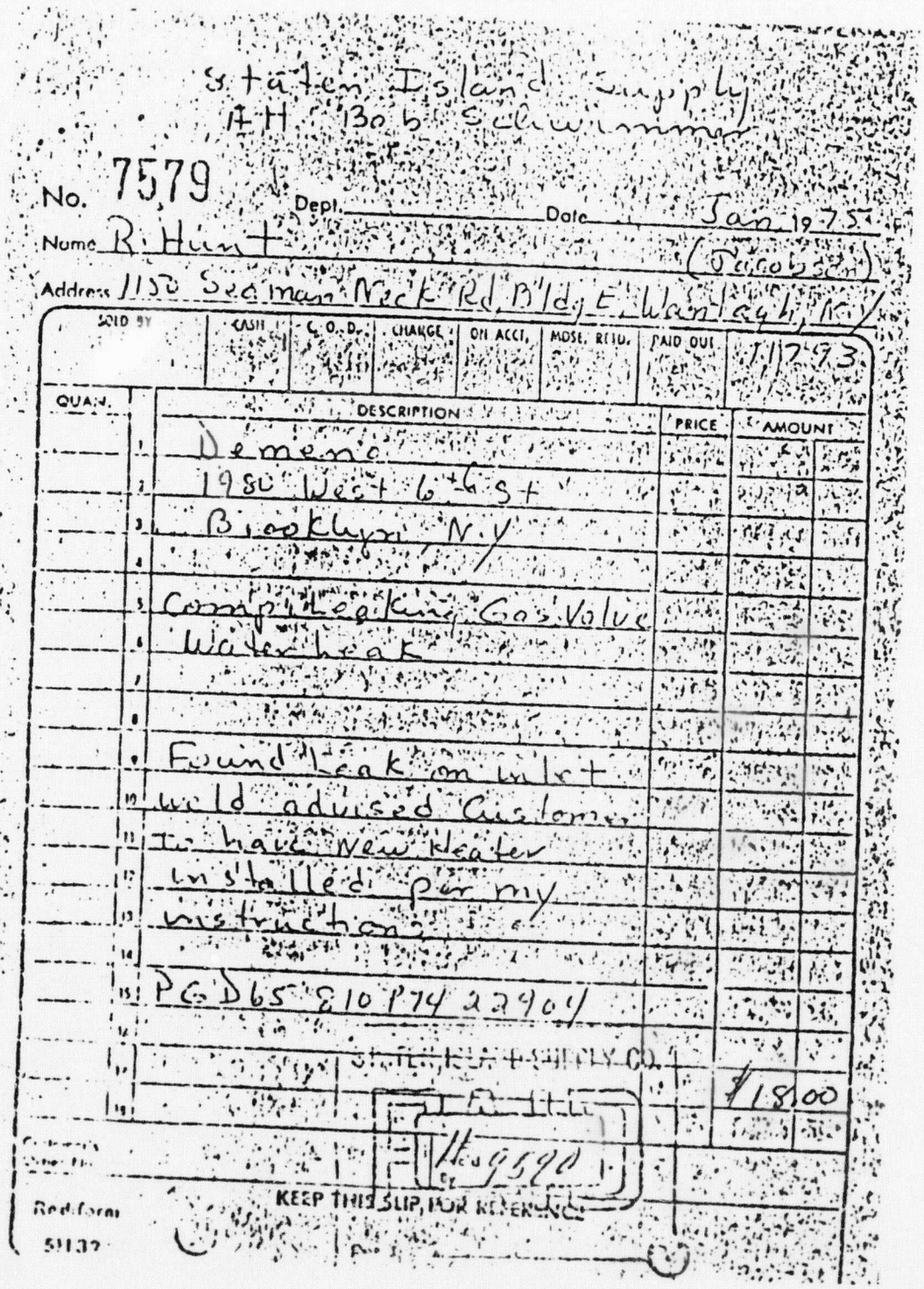
Address 1150 Seamen Neck Rd. Bldg E Woodbridge, N.Y.

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RTD.	PAID OUT	11793

QUAN.	DESCRIPTION	PRICE	AMOUNT
1	Hanson -		
2	6-09 79 1/2 pl		
3	Middle Village		
4			
5	Comp. leaking Water		
6	at thermostat		
7			
8			
9	Removed thermostat		
10	Lamp wicked and		
11	reinstalled		
12	Tested Left O.K.		
13			
14	RGD 40780 K 740212		
15			
16			
17			11.80
18	# 9572		

KEEP THIS SLIP FOR REFERENCE

Redi-form
SH 32



Staten Island Supply
17 H 130 b Schwimmer

No. 7579 Dept. _____ Date Jan 19 75

Name R. Hunt (Jacobson)

Address 1150 Seaman Neck Rd Bldg E Woodmere, N.Y.

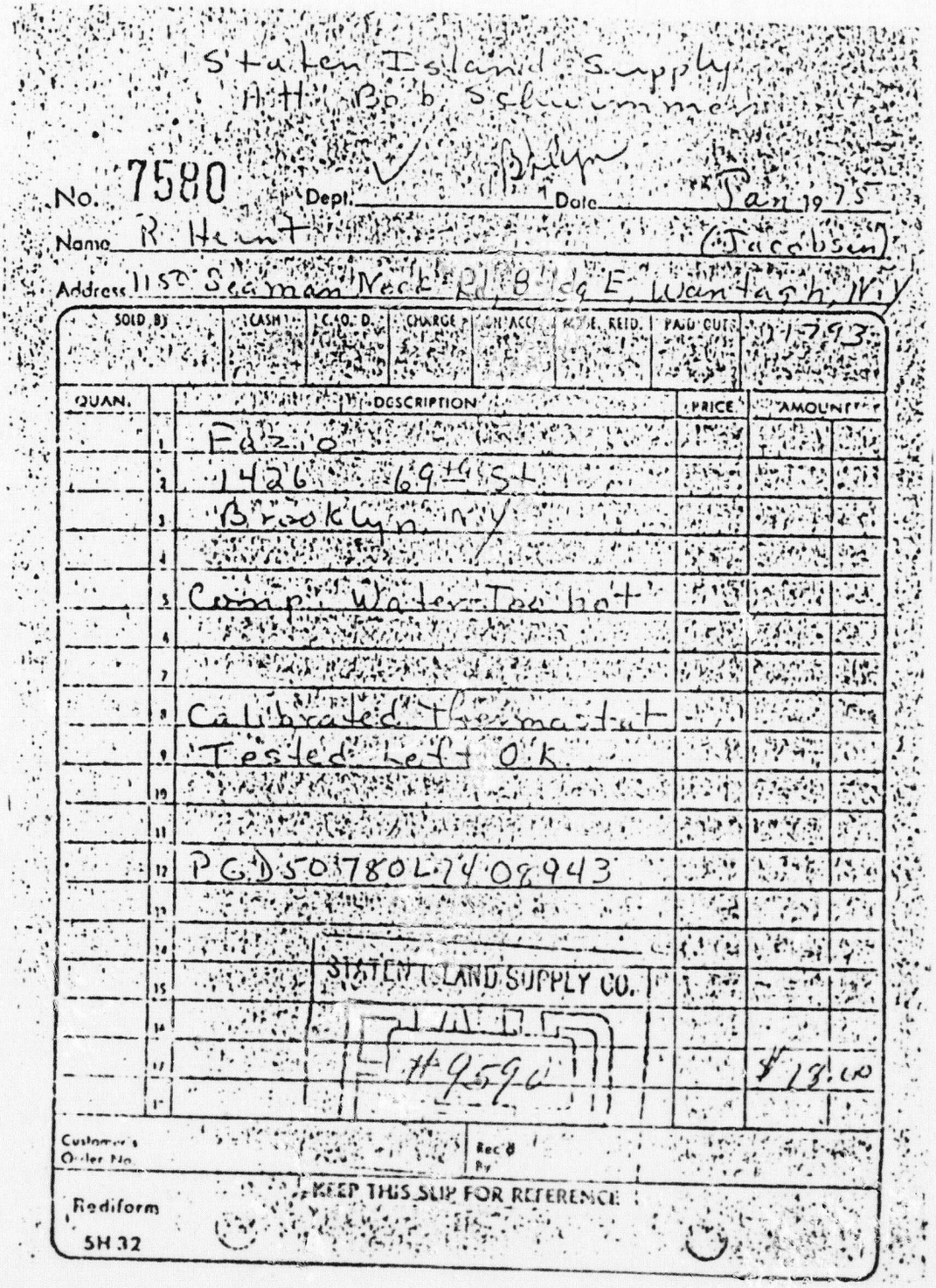
SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT	1173

QUAN.	DESCRIPTION	PRICE	AMOUNT
	Demens		
	1980 West 6 6 St		
	Brooklyn N.Y		
	Complete King Gas Valve		
	Water heat		
	Found leak on inlet		
	weld advised Customer		
	To have New Heater		
	Installed per my		
	instruction		
	PGD65 810 P74 2290J		
	STATEN ISLAND SUPPLY CO.		
			$18.00

KEEP THIS SLIP FOR REFERENCE

Red form 51132

EXHIBIT B(20)



Staten Island Supply
Att: Bob Schwimmer

No. 7580 Dept. Bldg Date Jan 19 75

Name R Hunt (Jacobsen)

Address 115 St Seaman Neck Rd Bldg E Wantagh NY

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT	1793

QUAN.		DESCRIPTION	PRICE	AMOUNT
	1	Fazio		
	2	1426 69th St		
	3	Brooklyn NY		
	4			
	5	Comp. Water Tow bot		
	6			
	7			
	8	Calibrated thermostat		
	9	Tested Left O.K.		
	10			
	11			
	12	PGD50780L74 08943		
	13			
	14			
	15	STATEN ISLAND SUPPLY CO.		
	16			
	17	#959		$18.00

Customer's Order No. Rec'd By

Rediform 5H 32 KEEP THIS SLIP FOR REFERENCE

Staten Island Supply
Att Bob Schwimmer

No. 7581 Dept. _____ Date Jan 1975

Name R Hunt (Jacobsen)

Address 1150 Seaman Neck Rd, Bldg E, Wantagh, N.Y.

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT	1193

QUAN.		DESCRIPTION	PRICE	AMOUNT
	1	Rudermann		
	2	600 C Front St		
	3	Hempstead, N.Y.		
	4			
	5	Compl Water doesn't		
	6	stay hot		
	7			
	8			
	9	Calibrated Thermostat		
	10	Tested 2-ft O.K.		
	11			
	12			
	13	PG & E 40 780 M 73 3079 2		
	14			
	15	STATEN ISLAND SUPPLY		
	16			
	17			$15.00
	18	9590		

Customer's Order No. Received By

KEEP THIS SLIP FOR REFERENCE

Red form SH 30

Staten Island Supply
ATT: Bob Schlimmer

No. 7583 Dept. Main Date Jan 19 75

Name R. Hurst (Jacobsen)

Address 1150 Seaman Neck Rd Bldg E, Wantagh, N.Y.

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT	11293

QUAN.		DESCRIPTION	PRICE	AMOUNT
	1	Manley		
	2	115-72 226 St		
	3	Cambria Heights, N.Y.		
	4			
	5	Comp. Pilot Gauge		
	6			
	7			
	8	Installed New Magnet		
	9	Tested Left 0.1C		
	10			
	11	(C) 40 750 N 74 32 6 W		
	12			
	13			
	14			
	15	STATEN ISLAND SUPPLY		
	16			18.00
		#9510		

Customer's Order

KEEP THIS SLIP FOR REFERENCE

Redform 5M132

EXHIBIT B(23)

Staten Island Supply
A H. Bob Schwimmer

No. 7582 Dept. Date Jan 1975

Name R Hunt (Jacobsen)

Address 1150 Seaman Neck Rd, Bldg E, Wantagh, N.Y.

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RET'D.	PAID OUT	11793

QUAN.	DESCRIPTION	PRICE	AMOUNT
1	Tomlinson		
2	164 Dewey Ave		
3	Albertson		
4			
5	Comp. Gas Leak		
6			
7			
8	Installed new Thermo to-		
9	Tested Left OK		
10			
11	PGU-30/SUK 73-34403		
12			
13			
14	L.I. Slippl Co.		
15			118.00
16			

Customer's Order No. Received By

Rediform SH 32

KEEP THIS SLIP FOR REFERENCE

A.O. Smith

EXHIBIT C(1)

Distributor Price Sheet

RESIDENTIAL
GAS WATER HEATERS

EFFECTIVE AUGUST 15, 1974
(Supersedes WH-1883 dated June 17, 1974)

PERMAGLAS MODEL NUMBER	GLASCOTE MODEL NUMBER	GALLONS CAPACITY	BTU INPUT (NAT.)	SUGGESTED LIST PRICE	DISTRIBUTOR PRICE	APPROXIMATE SHIPPING WEIGHT
SERIES III MODELS – 10 Yr. Guarantee						
PGD 30	GGH 30	30	53,000	$187.20	$ 93.60	125
PGD 40	GGH 40	40	58,000	203.60	101.80	152
PGD 50	GGH 50	50	65,000	248.40	124.20	176
PGD 65	GGH 65	65	65,000	359.50	179.75	322
PGD 75	GGH 75	75	85,000	397.00	198.50	332
PGD 100	GGH 100	100	100,000	541.50	270.75	394
PGDL 30	GGHL 30	30	42,000	187.20	93.60	129
PGDL 40	GGHL 40	40	50,000	203 60	101.80	153
SERIES II MODELS – 10 Yr. Guarantee						
PGX 30	GGD 30	30	42,000	164.50	82.25	112
PGX 40	GGD 40	40	45,000	178.80	89.40	138
PGX 50	GGD 50	50	50,000	225.80	112.90	166
PGX 75	GGD 75	75	75,000	374.30	187.15	299
PGX 100	GGD 100	100	90,000	527.40	263.70	381
PGXL 30	GGDL 30	30	40,000	164.50	82.25	116
PGXL 40	GGDL 40	40	45,000	178.80	89.40	144
SERIES I MODELS – 5 Yr. Guarantee						
KGA 20	GG 20	20	28,000	127.00	63.50	85
KGA 30	GG 30	30	40,000	130.40	65.20	110
KGA 40	GG 40	40	42,000	142.80	71.40	129
KGA 50	GG 50	50	50,000	180.30	90.15	168
KGA 75	GG 75	75	75,000	340.30	170.15	295
KGA 100	GG 100	100	80,000	501.30	250.65	376
KGL 30	GGL 30	30	38,000	130.40	65.20	114
KGL 40	GGL 40	40	42,000	142.80	71.40	145

STANDARD EQUIPMENT: 100% automatic, safe-side thermoelectric-type gas controls with energy cut-off device, and main burner regulation, for all gases

OPTIONAL EQUIPMENT: 2" clean-out on all models except 20 gallon models. Add $4.00 to Distributor Price.

TERMS OF SALE

PRICES IN EFFECT AT TIME OF SHIPMENT WILL GOVERN: These prices are effective August 15, 1974 and may be changed without notice. They are subject to any sales or use tax that may be assessed thereon.

TERMS: 2% discount if invoice is paid by 15th of the following month, net payment due 16th (2/15/16 PX).

FREIGHT ALLOWANCE: Prices are F.C.B., Kankakee Works, Kankakee, Illinois.

LESS THAN CARLOAD: Actual rate of freight allowed not to exceed $1.00 per cwt. on equipment weight shipped.

CARLOAD: Full freight allowed.

WAREHOUSE SHIPMENTS: Add 5% to all above prices for warehouse shipment. Warehouse shipments are F.O.B. warehouse. No freight allowed.

TRANSPORTATION CLAIMS: Since merchandise shipped to our customer becomes the property of the buyer upon receipt by the carrier, it is necessary that the merchandise be carefully inspected upon receipt to insure that the proper number of damage-free units has been received. In the event of shortage or damage, the buyer's receiving agent should have the carrier's agent make a notation of condition or shortages on the receiving report so that a claim can be filed against the carrier. If damage is discovered after unpacking, the carrier should be notified at once, so that inspection can be made and the claimed damage substantiated by the carrier. In all cases, the claim must be filed by the buyer.

RETURN OF MERCHANDISE: No merchandise may be returned to the factory or warehouse for credit until written authorization has been received from the A. O. SMITH Corporation. When so returned (provided equipment is new and unused), it must be returned freight prepaid and will be subject to a 10% restocking charge.
All merchandise returned without authorization will be refused and returned to the customer with any incurred expenses being charged back to the customer.

A.O. Smith

EXHIBIT C (1)

Distributor Price Sheet
RESIDENTIAL
ELECTRIC WATER HEATERS

EFFECTIVE AUGUST 15, 1974
(Supersedes WH-3838 dated June 17, 1974)

PERMAGLAS MODEL NUMBER	GLASCOTE MODEL NUMBER	GALLONS CAPACITY	SUGGESTED LIST PRICE	DISTRIBUTOR PRICE	APPROXIMATE SHIPPING WEIGHT
SERIES III 5,500 WATT ROUND MODELS – (Single Element Only) – 10 Yr. Guarantee					
PE 50	GE 50	50	$198.50	$ 99.25	153
PE 80	GE 80	80	283.50	141.75	227
SERIES II ROUND MODELS – 10 Yr. Guarantee					
PEN 30D	GED 30D	30	144.00	72.00	104
PEN 40D	GED 40D	40	170.10	85.05	126
PEN 52D	GED 52D	52	195.20	97.60	152
PEN 66D	GED 66D	66	240.40	120.20	186
PEN 80D	GED 80D	80	281.30	140.65	226
PEN 120D	GED 120D	120	435.50	217.75	355
SERIES II TABLE-TOP MODELS – 10 Yr. Guarantee					
PTD 30D	GTD 30D	30	201.90	100.95	132
PTD 40D	GTD 40D	40	226.90	113.45	160
PTD 50D	GTD 50D	50	247.30	123.65	194
No. 39691 Backsplash Panel for 30 and 40 Gallon Models			6.00	3.00	2
No. 32321-1 Backsplash Panel for 50 Gallon Models			6.00	3.00	2
SERIES II JACKETED UNDER-THE-COUNTER MODELS – 10 Yr. Guarantee					
PEL 20S	GEDL 20S (Single Element Only)	20	133.90	66.95	77
PEL 30D	GEDL 30D	30	156.50	78.25	94
PEL 40D	GEDL 40D	40	181.50	90.75	137
PEL 50D	GEDL 50D	50	211.00	105.50	175
SERIES II UNJACKETED UNDER-THE-COUNTER MODELS – 10 Yr. Guarantee					
PTU 30D	GEDU 30D	30	147.50	73.75	90
PTU 40D	GEDU 40D	40	170.10	85.05	117
PTU 50D	GEDU 50D	50	197.40	98.70	151
SERIES I ROUND MODELS – 5 Yr. Guarantee					
KEN 30D	GES 30D	30	118.00	59.00	105
KEN 40D	GES 40D	40	136.10	68.05	124
KEN 52D	GES 52D	52	156.50	78.25	147
KEN 66D	GES 66D	66	192.80	96.40	184
KEN 80D	GES 80D	80	224.60	112.30	222
KEN 120D	GES 120D	120	349.40	174.70	352
SERIES I JACKETED UNDER-THE-COUNTER MODELS – 5 Yr. Guarantee					
KEN 6	GES 6 (Single Element Only)	6	79.40	39.70	36
KEN 15	GES 15 (Single Element Only)	15	90.80	45.40	56
KEL 20S	GESL 20S (Single Element Only)	20	104.40	52.20	77
KEL 30D	GESL 30D	30	124.80	62.40	120
KEL 40D	GESL 40D	40	144.00	72.00	139
KEL 50D	GESL 50D	50	164.50	82.25	175

EXHIBIT C(1)

PERMAGLAS MODEL NUMBER	GLASCOTE MODEL NUMBER	GALLONS CAPACITY	SUGGESTED LIST PRICE	DISTRIBUTOR PRICE	APPROXIMATE SHIPPING WEIGHT
SERIES I UNJACKETED UNDER-THE-COUNTER MODELS – 5 Yr. Guarantee					
KTU 30D	GESU 30D	30	$118.00	$ 59.00	90
KTU 40D	GESU 40D	40	136.10	68.05	116
KTU 50D	GESU 50D	50	156.50	78.25	150
SERIES I TABLE-TOP MODELS – 5 Yr. Guarantee					
KTE 30D	GTE 30D	30	164.40	82.20	130
KTE 40D	GTE 40D	40	181.50	90.75	158
KTE 50D	GTE 50D	50	203.10	101.55	192
No. 39691 Backsplash Panel for 30 and 40 Gallon Models			6.00	3.00	2
No. 32321-1 Backsplash Panel for 50 Models			6.00	3.00	2

For Single Element Models · Deduct $3.00 from Distributor Price and $6.00 from List Price.

Above prices include one high-limit control as standard equipment. Add $2.50 to Distributor Price for second high-limit control and $5.00 to List Price.

480 Volt Single Phase Elements are available on all Electric Models 40-gallons and larger. Add $3.00 per element to Distributor Price and $6.00 per element to List Price.

TERMS OF SALE

PRICES IN EFFECT AT TIME OF SHIPMENT WILL GOVERN: These prices are effective August 15, 1974 and may be changed without notice. They are subject to any sales or use tax that may be assessed thereon.

TERMS: 2% discount if invoice is paid by 15th of the following month, net payment due 16th (2/15/16 PX).

FREIGHT ALLOWANCE: Prices are F.O.B., Kankakee Works, Kankakee, Illinois.

LESS THAN CARLOAD: Actual rate of freight allowed not to exceed $1.00 per cwt. on equipment weight shipped.

CARLOAD: Full freight allowed.

WAREHOUSE SHIPMENTS: Add 5% to all above prices for warehouse shipment. Warehouse shipments are F.O.B. warehouse, no freight allowed.

TRANSPORTATION CLAIMS: Since merchandise shipped to our customer becomes the property of the buyer upon receipt by the carrier, it is necessary that the merchandise be carefully inspected upon receipt to insure that the proper number of damage-free units has been received. In the event of shortage or damage, the buyer's receiving agent should have the carrier's agent make a notation of condition or shortages on the receiving report so that a claim can be filed against the carrier. If damage is discovered after unpacking, the carrier should be notified at once, so that inspection can be made and the claimed damage substantiated by the carrier. In all cases, the claim must be filed by the buyer.

RETURN OF MERCHANDISE: No merchandise may be returned to the factory or warehouse for credit until written authorization has been received from the A. O. SMITH Corporation. When so returned (provided equipment is new and unused), it must be returned freight prepaid and will be subject to a 10% restocking charge.
All merchandise returned without authorization will be refused and returned to the customer with any incurred expenses being charged back to the customer.

CONSUMER PRODUCTS DIVISION - KANKAKEE, ILLINOIS

A.O. Smith CORPORATION

February 28, 1975

ATTENTION: A. O. SMITH Customers

SUBJECT: Price Increase Announcement

On December 5, 1974, we informed you of our intention to delay the implementation of a price increase until March 31, 1975. Various material cost increases, along with normal labor and transportation cost increases incurred since our last price change in August 1974, now make it mandatory that we raise our prices on a selective basis.

We will maintain our pricing policy announcement of November 4, 1974, and maintain prices listed on the attached temporary price sheets dated April 1, 1975 for the second quarter of the year. If you require price protection for a longer period of time, we guarantee that we will not increase our prices by more than 6 percent over the second quarter level during the third quarter of 1975.

April 1, 1975 temporary price sheets are attached for residential water heaters, selected commercial water heaters, large volume storage tanks and hydronic boilers. All other products will be priced per our August 15, 1974 printed price sheets.

Orders will be accepted at present price levels for immediate shipment through March 14, 1975. All orders received by us after this date will be billed at prices in effect at time of shipment.

Printed price sheets covering all products listed on attached temporary price sheets will be available in the near future. Accessory items will be adjusted upward on a selective basis.

If you have any questions regarding this matter, please contact your local District Manager or Regional Sales Office.

Yours very truly,

R. N. Clark

Richard N. Clark
Assistant General Manager

RNC:ljg

EXHIBIT C(2) **A. O. SMITH PERSONNEL ONLY**

RESIDENTIAL GAS WATER HEATERS

PRICE SHEET -- Effective April 1, 1975

Model		Sugg. List	Utility	Distributor
PGD/GGH	30	$ 192.80	$ 101.25	$ 96.40
	40	209.70	110.10	104.85
	50	255.80	134.30	127.90
	65	370.30	194.40	185.15
	75	408.90	214.70	204.45
	100	557.80	292.85	278.90
PGDL/GGHL				
	30	192.80	101.25	96.40
	40	209.70	110.10	104.85
PGX/GGD	30	169.40	88.95	84.70
	40	184.20	96.70	92.10
	50	232.60	122.10	116.30
PGXL/GGDL	30	169.40	88.95	84.70
	40	184.20	96.70	92.10
KGA/GG	20	130.80	68.65	65.40
	30	134.30	70.50	67.15
	40	147.10	77.25	73.55
	50	185.70	97.50	92.85
	75	350.50	184.00	175.25
	100	516.30	271.05	258.15
KGL/GGL	30	134.30	70.50	67.15
	40	147.10	77.25	73.55

RESIDENTIAL OIL-FIRED WATER HEATERS

ROF	30	$ 444.00	$ 222.00
ROF	50	572.00	286.00

MJH:ljg

EXHIBIT C(2)

RESIDENTIAL ELECTRIC WATER HEATERS

PRICE SHEET - Effective April 1, 1975

Model		Sugg.List	Utility	Distributor
PE/GE	50	$ 204.50	$ 107.35	$ 102.25
	80	292.00	153.30	146.00
PEN/GED	30	146.30	76.80	73.15
	40	173.00	90.80	86.50
	52	198.90	104.40	99.45
	66	245.50	128.90	122.75
	80	287.60	151.00	143.80
	120	448.00	235.20	224.00
EDTT	30	208.00	109.20	104.00
	40	232.80	122.20	116.40
	50	252.50	132.55	126.25
EDLJ	20	135.70	71.25	67.85
	30	159.00	83.50	79.50
	40	184.80	97.00	92.40
	50	210.10	110.30	105.05
EDLU	30	149.80	78.65	74.90
	40	173.00	90.85	86.50
	50	201.10	105.60	100.55
KEN/GES	30	121.50	63.80	60.75
	40	140.20	73.60	70.10
	52	161.20	84.65	80.60
	66	198.60	104.25	99.30
	80	231.30	121.45	115.65
	120	359.90	188.95	179.95
ELJ	6	81.80	42.95	40.90
	15	93.50	49.10	46.75
	20	107.50	56.45	53.75
	30	128.50	67.45	64.25
	40	148.30	77.85	74.15
	50	169.40	88.95	84.70
ELU	30	121.50	63.80	60.75
	40	140.20	73.60	70.10
	50	161.20	84.65	80.60
ETT	30	169.30	88.90	84.65
	40	187.00	98.20	93.50
	50	209.20	109.85	104.60

MJH:ljg

EXHIBIT C(2)

COIL TYPE GAS COMMERCIAL WATER HEATERS

PRICE SHEET -- Effective April 1, 1975

Model	Sugg. List	Utility	Distributor
BC 120	$ 480.75	$ 287.75	$ 274.00
BC 160	548.75	328.50	312.75
BC 200	572.75	342.75	326.50
BC 225	655.75	392.50	373.75
BC 300	803.50	540.75	515.00
BC 399	1077.25	644.75	614.00
BC 420	1077.25	644.75	614.00
BC 670	1420.25	850.00	809.50
HWD 1000	2605.75	1559.50	1485.25
HW 1340	2941.75	1760.50	1676.75
HW 670T	2087.75	1249.50	1190.00
BCM 200	725.00	434.00	413.25

MJM:ljg

EXHIBIT C(2)

COMMERCIAL ELECTRIC WATER HEATER PRICE SHEET

Effective April 1, 1975

Model	Sugg. List	Distributor
DVE 150-15	$ 2930.00	$ 1670.00
24	3097.00	1765.00
30	3209.00	1829.00
36	3320.00	1892.00
45	3488.00	1988.00
60	3767.00	2147.00
75	4046.00	2306.00
90	4325.00	2465.00
105	4604.00	2624.00
120	4883.00	2783.00
150	5441.00	3101.00
DVE 200-30	3534.00	2014.00
36	3646.00	2078.00
45	3813.00	2173.00
60	4092.00	2332.00
75	4370.00	2491.00
90	4649.00	2650.00
105	4928.00	2809.00
120	5207.00	2968.00
150	5765.00	3286.00
180	6323.00	3604.00
DVE 250- 30	3860.00	2200.00
36	3970.00	2263.00
45	4139.00	2359.00
60	4418.00	2518.00
75	4697.00	2677.00
90	4976.00	2836.00
105	5255.00	2995.00
120	5534.00	3154.00
150	6092.00	3472.00
180	6650.00	3790.00
210	7208.00	4108.00
240	7765.00	4426.00
DVE 300- 36	4297.00	2449.00
45	4463.00	2544.00
60	4742.00	2702.00
75	5021.00	2862.00
90	5300.00	3021.00
105	5579.00	3180.00
120	5858.00	3339.00
150	6416.00	3657.00
180	6974.00	3975.00
210	7532.00	4293.00
240	8090.00	4611.00

EXHIBIT C(2)

Model	Sugg. List	Distributor
DVE 350 - 45	$ 4790.00	$ 2730.00
60	5069.00	2889.00
75	5348.00	3048.00
90	5627.00	3207.00
105	5906.00	3366.00
120	6185.00	3525.00
150	6743.00	3843.00
180	7300.00	4161.00
210	7858.00	4479.00
240	8415.00	4796.00
270	8974.00	5115.00
300	9532.00	5433.00
DVE 400 - 45	5114.00	2915.00
60	5393.00	3074.00
75	5672.00	3233.00
90	5951.00	3392.00
105	6230.00	3551.00
120	6509.00	3710.00
150	7067.00	4028.00
180	7625.00	4346.00
210	8183.00	4664.00
240	8741.00	4982.00
270	9299.00	5300.00
300	9857.00	5618.00
330	10414.00	5936.00
360	10973.00	6254.00
390	11531.00	6572.00
DVE 500 - 45	5765.00	3286.00
60	6044.00	3445.00
75	6323.00	3604.00
90	6602.00	3763.00
105	6881.00	3922.00
120	7160.00	4081.00
150	7718.00	4399.00
180	8276.00	4717.00
210	8834.00	5035.00
240	9392.00	5353.00
270	9950.00	5671.00
300	10508.00	5989.00
330	11066.00	6307.00
360	11624.00	6625.00
390	12182.00	6943.00
420	12739.00	7261.00
450	13297.00	7579.00
480	13855.00	7897.00

MJH:ljq

EXHIBIT C(2)

COPPER HEAT EXCHANGER BOILER

PRICE SHEET -- Effective April 1, 1975

Model	Sugg. List	Utility	Distributor
Packaged Boilers			
HW 80P	$ 542.00	$ 324.50	$ 309.00
HW 100P	586.00	350.75	334.00
HW 120P	625.50	374.25	356.50
HW 160P	711.50	425.75	405.50
HW 200P	772.75	462.50	440.50
HW 225P	831.25	497.50	473.75
Commercial Boilers			
HW 300	917.25	549.00	522.75
HW 399	1134.25	678.75	646.50
HW 420	1134.25	678.75	646.50
HW 670	1476.50	883.50	841.50
HW 1000	2605.75	1559.50	1485.25
HW 1340	2941.75	1760.50	1676.75
Unpackaged Boilers			
HW 80	404.75	242.25	230.75
HW 100	443.00	265.00	252.50
HW 120	481.25	288.00	274.25
HW 160	607.50	363.50	346.25
HW 200	655.75	392.50	373.75
HW 225	714.50	427.50	407.25

MJH:ljg

EXHIBIT C(2)

GLASS LINED STORAGE TANKS PRICE SHEET

Effective April 1, 1975

Model	Sugg. List	Utility	Distributor
T 80S	$ 201.00	$ 120.25	$ 114.50
TJ 80S	254.50	152.25	145.00
T 120S	385.00	230.50	219.50
T 200S	627.25	375.50	357.50
T 350S	912.50	546.00	520.00
T 80A	453.00	271.25	258.25
TJ 80A	515.00	308.25	293.50
T 140A	628.00	376.00	358.00
T 200A	772.50	462.25	440.25
T 350A	1085.50	649.75	618.75
T 400A	1289.50	771.75	735.00
TL 500A	1802.50	1078.50	1027.25
T 500A	2465.50	1475.50	1405.25
T 750A	2747.50	1644.50	1566.00
T 1000A	3991.50	2388.75	2275.00

MJH:ljg

EXHIBIT C(3)

EASE REMIT TO:

.O.SMITH-CONSUMER 900.
.O.BOX 4354
URCH ST.STATION
W YORK,N.Y. 10249

A. O. SMITH CONSUMER PRODUCTS
KANKAKEE, ILLINOIS U.S.A. 60901

SOLD TO
STATEN ISLAND SUPPLY COMPANY
1390 RICHMOND TERRACE
STATEN ISLAND NEW YOR 10310

CUST. NO. 4820 00

SHIP TO
STATEN ISLAND SUPPLY COMPANY
1390 RICHMOND TERRACE
STATEN ISLAND NEW YOR 10310

A.O.S. ORDER NO.	REV.	INVOICE NO.	DATE	SALES
717508127	0	7175081270	05/06/75	011

CUST. ORDER NO.	ORDER DATE	REQUESTED ROUTING	REQ. SHIP. DATE	TERMS
2617 20F2	03/22/75		05/01/75	23 912

BILL OF LADING	B/L DATE	SHIPPED VIA	P.P.	COL.	TOTAL WEIGHT	CAR NUMBER	F.O.B. POINT
184207	05/06/75	TOFC	P		3,394		KANKAKEE

QTY. ORDER	MODEL	SIZE	SERIES	CP		SMR				ITEM WEIGHT	C C	QUANTITY B.O.	QUANTITY SHIP'D	PRICE	EXTENSION
1	PEN	30	780T		A6		4500	4500	240	104	1		1	73.15	73.1
1	PEN	40	780T		A6		4500	4500	240	126	1		1	86.50	86.5
1	PEN	52	780T		A6		4500	4500	240	151	1		1	99.45	99.4
1	PEN	66	780T		A6		4500	4500	240	184	1		1	122.75	122.7
1	PEN	80	780T		A6		4500	4500	240	226	1		1	143.80	143.8
2	ELJ	6	820		C2		0000	1500	120	00	1	2			
5	ELJ	15	820		C2		0000	1500	120	280	1		5	46.75	233.75
2	PGOL	30	780		N					258	1		2	96.40	192.8
5	PGOL	40	780		N					765	1		5	104.85	524.2
5	PGXL	30	790		N					580	1		5	84.70	423.5
5	PGXL	40	790		N					720	1		5	92.10	460.5
														TOTAL	2,360.4

WEIGHT	RATE/CWT	S. C.	FREIGHT COST	FREIGHT ALLOWANCE	FREIGHT DUE	EQUIPMENT	WAREHOUSE CHG.	TOTAL DUE
3,394	3.48		118.09	118.09		2380.45		2,360.4
				89				
3,394			118.09	118.09		2360.45		

DISCOUNT $ 47.20 IF PAID BY 05/15/75 NET 06/16/75

EXHIBIT C(4)

ASE REMIT TO:

O.SMITH-CONSUMER PROD.
O.BOX 4354
URCH ST.STATION
W YORK,N.Y. 10249

CONSUMER PRODUCTS
KANKAKEE, ILLINOIS U.S.A. 60901

CUST. NO. 4820 00

SOLD TO
STATEN ISLAND SUPPLY COMPANY
1390 RICHMOND TERRACE
STATEN ISLAND NEW YOR 10310

SHIP TO
STATEN ISLAND SUPPLY COMPANY
1390 RICHMOND TERRACE
STATEN ISLAND NEW YOR 10310

A.O.S. ORDER NO.	REV.	INVOICE NO.	DATE	SALES
717508126	0	7175081260	05/06/75	011

CUST. ORDER NO.	ORDER DATE	REQUESTED ROUTING	REQ. SHIP. DATE	TERMS
17 10F2	03/22/75		05/01/75	2% 912

BILL OF LADING	B/L DATE	SHIPPED VIA	P.P.	COL.	TOTAL WEIGHT	CAR NUMBER	F.O.B. POINT
184207	05/06/75	TOFC	P		11,064		KANKAKEE

MODEL	SIZE	SERIES	CP		SMR	ITEM WEIGHT	C	C	QUANTITY B.O.	QUANTITY SHIP	PRICE	EXTENSION
PGD	30	780		N		1,000	1		2	8	90.40	771.2
PGD	40	780		N		3,040	1			20	104.85	2,097.0
PGD	50	780		N		1,056	1		14	6	127.90	767.4
PGD	65	810		N		00	1		10			
PGD	75	790		N		00	1		10			
PGX	30	790		N		1,120	1			10	84.70	847.0
PGX	40	790		N		1,380	1			10	92.10	921.0
PGX	50	790		N		00	1		10			
KGA	30	800		N		1,760	1		4	16	67.15	1,074.40
KGA	40	800		N		00	1		20			
KGA	50	800		N		672	1		6	4	92.85	371.40
KGA	75	810		N		00	1		1			
KGA	100	810		N		00	1		1			
KGL	30	800		N		456	1			4	67.15	268.60
KGL	40	810		N		580	1			4	73.99	294.2
											TOTAL	7,412..

WEIGHT	RATE/CWT	S. C.	FREIGHT COST	FREIGHT ALLOWANCE	FREIGHT DUE	EQUIPMENT	WAREHOUSE CHG.	TOTAL DUE
11,064	3.48		385.03	385.03		7412.20		7,412.2
				90				
11,064			385.03	385.03		7412.20		

DISCOUNT $ 148.24 IF PAID BY 06/15/75 NET 06/16/75

AFFIDAVIT OF DANIEL V. HALL IN
SUPPORT OF ORDER TO SHOW CAUSE
AND EXHIBITS

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- -X

STATEN ISLAND SUPPLY COMPANY, INC., : AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE

Plaintiff, :

- against - : 75 Civ. 461

A. O. SMITH CORPORATION, EQUIPMENT DISTRIBUTORS CORP. and BROOKLYN UNION GAS COMPANY, :

Defendants. :

- -X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, DANIEL V. HALL, being duly sworn, depose and say:

1. I am Branch Manager of defendant A. O. Smith Corporation ("Smith") Product Service Division, familiar with dealings between plaintiff and Smith, and make this affidavit in support of the order to show cause issued by the Court on behalf of Smith and returnable September 19, 1975, and requiring plaintiff to show cause why an order should not be entered herein dissolving the preliminary injunction directed by the Court herein by order dated May 1, 1975, and for such other and further relief as the Court may consider proper.

Facts in counsel's affidavit

2. I have reviewed the affidavit of Don Allen Resnikoff sworn to September 4, 1974 in support of Smith's order to show cause, and state that the facts stated in that affidavit are correct, with particular reference to numbered paragraphs 6 and 7 thereof, and the truth of the matter stated in Exhibit D thereof. As stated in paragraph 6 of Mr. Resnikoff's affidavit, my letter of August 14, 1975 annexed as Exhibit D thereto, requested plaintiff to provide customer's names and addresses in connection with warranty administration. My letter was met by plaintiff's written admission that the addresses provided by plaintiff to Smith are fictitious.

Annexed hereto as exhibits following the heading "Hall letter 8/14/75" are a duplicate copy of my letter annexed as an exhibit to the supporting affidavit of Mr. Resnikoff, and, as to names and addresses stated in that letter, (a) a copy of the Smith letter sent to each, (b) a copy of the mailing envelope for that letter bearing the post office's "insufficient address" notation, and (c) a copy of the relevant "2501" form submitted by plaintiff from which Smith obtained the addresses resulting in the returned informational mailing of Smith to the consumer.

Further similar incidents

3. Annexed hereto following the heading "Hall letter 9/5/75" is a copy of my letter to plaintiff dated September 5, 1975, stating eleven further instances where customer address information provided by plaintiff in May and June of 1975 resulted in mailings by Smith returned by the United States Post Office for insufficient address. Also attached as to each name and address stated in my above mentioned letter of September 5, 1975, is (a) a copy of the Smith letter sent to each, (b) a copy of the mailing envelope for that letter bearing the post office's "insufficient address" notation, and (c) a copy of the relevant "2501" form submitted by plaintiff from which Smith obtained the addresses resulting in the returned informational mailing of Smith to the consumer.

Daniel V. Hall

Sworn to before me this
11th day of September, 1975.

Joseph P. Giasi Jr.
Notary Public

JOSEPH P. GIASI, JR.
Notary Public State of New York
No. 24-6505065
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1976

cc: P. H. Fahrer – Chicago
P. P. Toth – Union
B. L. Gill

EXHIBIT

August 14th 1975

Staten Island Supply Company
1390 Richmond Terrace
Staten Island, New York 10310
Attention: Mr. Robert Schwimmer

Dear Mr. Schwimmer:

We have recently noticed an increase in the return of water heater warranty restriction letters from your end user customers. These letters, as you know, are sent out after we issue credit to Staten Island Supply, advising the customer of the warranty restriction on the new heater. We, therefore, require that you supply us with the correct name and address, in order that our warranty restriction letter can be sent on to the proper end user.

The first one we received back was from Mr. Weissgarten, 81 Northrop Avenue, Staten Island, New York. This was covered by your 2501 form #22586 of June 8th 1975 covering a PGM-50 serial #740 66-1C00319 which was item number one of our credit memo #28455.

The second was from Mr. Veri, 84 Patton Street, Staten Island, New York. This was covered by your 2501 form #22601 dated May 30th 1975 for a model PEN-40 serial #75067 1M21392.

The third one was from Mr. Smith, 587 Branch Terrace, Staten Island, New York. This was covered by your 2501 form #22587 for a PGD-40 serial #780 C7535027. This was item number one of credit memo #28365 of June 14th 1975.

The fourth was from Mr. Palent, 332 Carpo Place, Staten Island, New York. This was covered by your 2501 form #22585 for a model PGD-65 serial #77070 1F05513.

– Please turn to page two –

EXHIBIT

Immediately upon receipt of the correct names and address, we will send a new letter out. However, if such information is not forthcoming in thirty days, we will have no alternative but to cancel our credit for these heaters.

Very truly yours,

A. O. SMITH Corporation

D. V. Hall
Manager - Eastern Branch
Product Service Division

DVH:wjc

Attachment: Copies of letters and envelopes

PRODUCT SERVICE DIVISION · 825 LEHIGH AVENUE · UNION, NEW JERSEY 07083 · 201 686-9000 · TELEX 13-8771

EXHIBIT

A. O. SMITH CORPORATION

JUNE 23, 1975

MR. WEISSGARTEN
81 NORTHROP AVE.
STATEN ISLAND, NY

DEAR MR. WEISSGARTEN,

WE'RE SORRY TO LEARN THAT YOUR A. O. SMITH WATER HEATER HAD TO BE REPLACED. WE SINCERELY REGRET THE DIFFICULTIES THIS MUST HAVE CAUSED AND WE HOPE THAT THE NEW UNIT, SUPPLIED AT NO CHARGE UNDER THE TERMS OF OUR GUARANTEE, IS FUNCTIONING TO YOUR COMPLETE SATISFACTION. CHARGES FOR INSTALLATION AND DELIVERY OR FOR A MORE EXPENSIVE REPLACEMENT ARE EXCLUDED FROM THE GUARANTEE.

YOUR NEW WATER HEATER DESCRIBED BELOW IS GUARANTEED FOR THE REMAINDER OF THE TERM COVERING YOUR ORIGINAL UNIT.

MODEL PGD 50
SERIAL NO. 780 L54090
ORIGINAL GUARANTEE - TEN YEARS
EXPIRATION DATE - MAY 1, 1976

WE'VE REGISTERED YOUR NEW WATER HEATER IN OUR GUARANTEE EXTENSION RECORDS IN CASE ANY QUESTIONS CONCERNING IT SHOULD ARISE IN THE FUTURE. IF NECESSARY PLEASE REFER TO OUR FILE NUMBER 28455.

VERY TRULY YOURS,

A. O. SMITH CORPORATION
PRODUCT SERVICE DIVISION

D. V. HALL, BRANCH MANAGER

DVH/F

PRODUCT SERVICE DIVISION
7250 SO. CICERO AVENUE • CHICAGO, ILLINOIS 60629

Staten Island Surg.
Hill

A.O. Smith CORPORATION

a Century Forward

CHICAGO JUN 23 75 ILL. U.S. POSTAGE

RETURNED TO SENDER
REASON CHECKED
Refused
Unclaimed
Addressee unknown
Insufficient Address
No such street
No such number
No such office in state
Do not remain in this envelope

RE
P.S.D., UN J.
JUL 2 1975
AM 7 8 9 10 11 12 1 2 8 4 5 6 PM

EXHIBIT

97

EXHIBIT

A.O. SMITH CORPORATION

WATER HEATER WARRANTY REPLACEMENT REPORT (3)

DO NOT USE THIS FORM FOR PARTS REPLACEMENT

PLEASE MAIL THIS COPY (NO. 2) TO YOUR PRODUCT SERVICE BRANCH AND RETAIN HEATER UNTIL RECEIPT OF OUR INSTRUCTIONS WITHIN NEXT FEW DAYS

0022588

DISTRIBUTOR OR UTILITY NAME	1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE NO. 16-25
Staten Island Supply Co Inc	S	1	2	008455	482000	0022588

ADDRESS, CITY, STATE, ZIP CODE: 1390 Richmond Terrace S.I. N.Y. 10310 — 11/65

DEFECTIVE HEATER DATA

27-31 MODEL	GALS. 32-35	ELEM. 36 (S)	A7 37 (7)	BAKSPL 38 (B)	CLNOUT 39 (C)	TYPE 40	UNR. 41 (U,N,D)	COM. 42 (C)	MIL 43 (M)
PGM	50								

SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58	INSTALL. DATE 59-60 / 61-62	FAILURE DATE 63-64 / 65-66	MOS. 67-69	DIST. 70-72	CODE 73	DOL. 74-80
E 5966-	1	C	00818		5 8	6 8	109			

REPL. HEATER DATA

1	2-25	AUTH. 26 (A)	27-31 MOD. - GAL. 32-35	EXPIRES 36-37 / 38-39	YEARS 40-41	SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58
T	DUP.	A	PGD 50		10	L-	34090			

INSTALL. DATE 59-60 / 61-62 — 63-80 TITLE: Mr WEISSGARTEN — 5/76-10

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U						LA		

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U						HA		

1	2-9	10-40 END USER'S NAME	41-59 ADDRESS
V	DUP.	Weissgarten	81 Northrop Ave

60-73 CITY	STATE 74-75	ZIP CODE 76-80	DESCRIPTION OF FAILURE
S I N Y			Leaks

DEALER NAME, ADDRESS, CITY AND STATE

REMARKS

DATE	SIGNATURE	SEND MORE FORMS	PSD-2501D	ENVELOPES
6 8 76	[signature]	☐		☐

PSD-2501D-774

MAIL THIS COPY TO YOUR PRODUCT SERVICE BRANCH.

Returned 10/10

PRODUCT SERVICE DIVISION • 825 LEHIGH AVENUE • UNION, NEW JERSEY 07083 • 201 686-9000 • TELEX 13-8771

EXHIBIT

A. O. Smith CORPORATION

JUNE 17, 1975

MR. VERI
84 PATTON ST.
STATEN ISLAND, NY

DEAR MR. VERI,

WE'RE SORRY TO LEARN THAT YOUR A. O. SMITH WATER HEATER HAD TO BE REPLACED. WE SINCERELY REGRET THE DIFFICULTIES THIS MUST HAVE CAUSED AND WE HOPE THAT THE NEW UNIT, SUPPLIED AT NO CHARGE UNDER THE TERMS OF OUR GUARANTEE, IS FUNCTIONING TO YOUR COMPLETE SATISFACTION. CHARGES FOR INSTALLATION AND DELIVERY OR FOR A MORE EXPENSIVE REPLACEMENT ARE EXCLUDED FROM THE GUARANTEE.

YOUR NEW WATER HEATER DESCRIBED BELOW IS GUARANTEED FOR THE REMAINDER OF THE TERM COVERING YOUR ORIGINAL UNIT.

MODEL PEN 40
SERIAL NO. 780 74 67587
ORIGINAL GUARANTEE - TEN YEARS
EXPIRATION DATE - DECEMBER 1, 1977

WE'VE REGISTERED YOUR NEW WATER HEATER IN OUR GUARANTEE EXTENSION RECORDS IN CASE ANY QUESTIONS CONCERNING IT SHOULD ARISE IN THE FUTURE. IF NECESSARY PLEASE REFER TO OUR FILE NUMBER 26365.

VERY TRULY YOURS,

A. O. SMITH CORPORATION
PRODUCT SERVICE DIVISION

D. V. HALL, BRANCH MANAGER

DVH/F

PRODUCT SERVICE DIVISION
7250 SO. CICERO AVENUE • CHICAGO, ILLINOIS 60629

Staten Island Supply
Gill

A.O. Smith CORPORATION

JUN 17 75

RETURNED TO SENDER
REASON CHECKED
Unclaimed
Refused
Addressee unknown
Insufficient Address
No such street
number
No such office in state
not named in this envelope

Not for Route No 72

100

EXHIBIT

A.O. Smith CORPORATION

WATER HEATER WARRANTY REPLACEMENT REPORT

DO NOT USE THIS FORM FOR PARTS REPLACEMENT

PLEASE MAIL THIS COPY (NO. 2) TO YOUR PRODUCT SERVICE BRANCH AND RETAIN HEATER UNTIL RECEIPT OF OUR INSTRUCTIONS WITHIN NEXT FEW DAYS

0022601

DISTRIBUTOR OR UTILITY NAME	1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	AOS ACCT. NO. 10-15	CUST. REFERENCE NO. 16-25
Ste. Rock Supply Co Inc	S	4	0	003365	482000	0022601

ADDRESS, CITY, STATE, ZIP CODE: 1390 Richmond Terrace S I N.Y. 0/0

DEFECTIVE HEATER DATA	27-31 MODEL	GALS. 32-35	ELEM. 36 (S)	A7 37 (7)	BAKSPL 38 (B)	ELNOUT 39 (C)	TYPE 40	UNR. 41 (U,N,D)	COM. 42 (C)	MIL 43 (M)
	PEN	40								

SERIES 44-49	YR. 50-51	LN. 62	MO. 53	SERIAL 54-58	INSTALL. DATE 59-60 / 61-62	FAILURE DATE 63-64 / 65-66	MOS. 67-69	DIST. 70-72	CODE 73	DOL. 74-80
75067			1	1421382	12 / 8	67 / 5 / 8 / 75	89			

REPL. HEATER DATA	1	2-25	AUTH. 26 (A)	27-31 MOD. - GAL. 32-35	EXPIRES 36-37 / 38-39	YEARS 40-41	SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58
	T	DUP.		PEN 40	7 / 80	74		675	8	7	

INSTALL. DATE 58-60 / 61-62 — 63-80 TITLE: MR. VERI — 12/77-10

	1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U							LA		

	1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U							HA		

	1	2-9	10-40 END USER'S NAME	41-59 ADDRESS
V		DUP.	Veri	84 Padol St

60-73 CITY: S I N Y — STATE 74-75 — ZIP CODE 76-80 — DESCRIPTION OF FAILURE: Leaks

DEALER NAME, ADDRESS, CITY AND STATE:

REMARKS:

DATE	SIGNATURE	SEND MORE FORMS	ENVELOPES
5 30 75		☐ PSD-2501D	☐

PSD-2501D-774

MAIL THIS COPY TO YOUR PRODUCT SERVICE BRANCH

12 Gal 0/2

PRODUCT SERVICE DIVISION • 825 LEHIGH AVENUE • UNION, NEW JERSEY 07083 • 201 688-9000 • TELEX

EXHIBIT

A. O. Smith CORPORATION

JUNE 17, 1975

MR. SMITH
587 BRANCH TER.
STATEN ISLAND, NY

DEAR MR. SMITH,

WE'RE SORRY TO LEARN THAT YOUR A. O. SMITH WATER HEATER HAD TO BE REPLACED. WE SINCERELY REGRET THE DIFFICULTIES THIS MUST HAVE CAUSED AND WE HOPE THAT THE NEW UNIT, SUPPLIED AT NO CHARGE UNDER THE TERMS OF OUR GUARANTEE, IS FUNCTIONING TO YOUR COMPLETE SATISFACTION. CHARGES FOR INSTALLATION AND DELIVERY OR FOR A MORE EXPENSIVE REPLACEMENT ARE EXCLUDED FROM THE GUARANTEE.

WE HOPE YOU WILL ACCEPT OUR ASSURANCE FOR YEARS OF USEFUL SERVICE FROM YOUR NEW WATER HEATER. IF NECESSARY PLEASE REFER TO OUR FILE NUMBER 28365.

VERY TRULY YOURS,

A. O. SMITH CORPORATION
PRODUCT SERVICE DIVISION

D. V. HALL, BRANCH MANAGER

DVH/F

PRODUCT SERVICE DIVISION
7250 SO. CICERO AVENUE • CHICAGO, ILLINOIS 60629

Staten Island Supply
Hill

RETURNED TO SENDER

RETURNED CHECKED
Unclaimed ___ Refused ___
Addressee unknown ___
Insufficient Address ___
No such street ___ number ___
No such office in state ___
Do not remail in this envelope

a Century Forward

CHICAGO ILL. JUN 17 75 U.S. POSTAGE 10

EXHIBIT 3

103

EXHIBIT

A.O. Smith CORPORATION

WATER HEATER WARRANTY REPLACEMENT REPORT

(4)

DO NOT USE THIS FORM FOR PARTS REPLACEMENT

PLEASE MAIL THIS COPY (NO. 2) TO YOUR PRODUCT SERVICE BRANCH AND RETAIN HEATER UNTIL RECEIPT OF OUR INSTRUCTIONS WITHIN NEXT FEW DAYS

0022587

DISTRIBUTOR OR UTILITY NAME	1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	AOS ACCT. NO. 10-15	CUST. REFERENCE NO. 16-25
Staten Island Supply Co Inc	S	1	2	038365	482000	0022587

ADDRESS, CITY, STATE, ZIP CODE

1390 Richmond Terrace S.T N.Y. 10310 3/75

DEFECTIVE HEATER DATA

27-31 MODEL	GALS. 32-35	ELEM. 36 (S)	A7 37 (7)	BAKSPL 38 (B)	CLNOUT 39 (C)	TYPE 40	UNR. 41 (U,N,D)	COM. 42 (C)	MIL 43 (M)
P6D	40						U		

SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58	INSTALL. DATE 59-60 61-62	FAILURE DATE 63-64 65-66	MOS. 67-69	DIST. 70-72	CODE 73	DOL. 74-80
780	C-75			35027	3/14	5/8/75 2				

REPL. HTR. DATA

1	2-25	AUTH. 26 (A)	27-31 MOD. - GAL. 32-35	EXPIRES 36-37 38-39	YEARS 40-41	SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58
T	DUP.		P6D 40		780	C-	75	C	2	3751

INSTALL. DATE 59-60 61-62 | 63-80 TITLE: Mr. Smith

	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
1 U						LA		

	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
1 U						HA		

1	2-9	10-40 END USER'S NAME	41-59 ADDRESS
V	DUP.	Smith	587 Branch Ter

60-73 CITY	STATE 74-75	ZIP CODE 76-80	DESCRIPTION OF FAILURE
S.I.	N.Y.		Leaks

DEALER NAME, ADDRESS, CITY AND STATE

REMARKS

DATE	SIGNATURE	SEND MORE FORMS	ENVELOPES
5/7	[signature]	☒ PSD-2501D	☒

PSD-2501D-774

MAIL THIS COPY TO YOUR PRODUCT SERVICE BRANCH

CR

PRODUCT SERVICE DIVISION - A.O. SMITH CORPORATION

EXHIBIT

A. O. SMITH CORPORATION

JUNE 17, 1975

MR. PALENT
332 CARPO PL.
STATEN ISLAND, NY

DEAR MR. PALENT,

WE'RE SORRY TO LEARN THAT YOUR A. O. SMITH WATER HEATER HAD TO BE REPLACED. WE SINCERELY REGRET THE DIFFICULTIES THIS MUST HAVE CAUSED AND WE HOPE THAT THE NEW UNIT, SUPPLIED AT NO CHARGE UNDER THE TERMS OF OUR GUARANTEE, IS FUNCTIONING TO YOUR COMPLETE SATISFACTION. CHARGES FOR INSTALLATION AND DELIVERY OR FOR A MORE EXPENSIVE REPLACEMENT ARE EXCLUDED FROM THE GUARANTEE.

YOUR NEW WATER HEATER DESCRIBED BELOW IS GUARANTEED FOR THE REMAINDER OF THE TERM COVERING YOUR ORIGINAL UNIT.

MODEL PGD 65
SERIAL NO. 780 75 22585
ORIGINAL GUARANTEE - TEN YEARS
EXPIRATION DATE - MAY 1, 1980

WE'VE REGISTERED YOUR NEW WATER HEATER IN OUR GUARANTEE EXTENSION RECORDS IN CASE ANY QUESTIONS CONCERNING IT SHOULD ARISE IN THE FUTURE. IF NECESSARY PLEASE REFER TO OUR FILE NUMBER 28365.

VERY TRULY YOURS,

A. O. SMITH CORPORATION
PRODUCT SERVICE DIVISION

D. V. HALL, BRANCH MANAGER

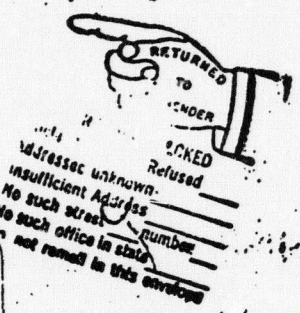
DVH/F

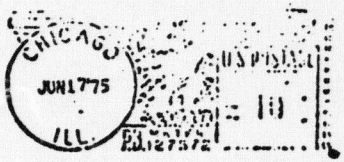
AS 100

PRODUCT SERVICE DIVISION
2250 SO. CICERO AVENUE • CHICAGO, ILLINOIS 60629

Staten Island Supply
Gill

Smith CORPORATION





EXHIBIT

106

EXHIBIT

A.O. Smith CORPORATION

WATER HEATER WARRANTY REPLACEMENT REPORT

DO NOT USE THIS FORM FOR PARTS REPLACEMENT

PLEASE MAIL THIS COPY (NO. 2) TO YOUR PRODUCT SERVICE BRANCH AND RETAIN HEATER UNTIL RECEIPT OF OUR INSTRUCTIONS WITHIN NEXT FEW DAYS

0022586

DISTRIBUTOR OR UTILITY NAME	1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	AOS ACCT. NO. 10-15	CUST. REFERENCE NO. 16-25
Steen Plumb Supply Co	S	3	2	3365	482000	0022586

ADDRESS, CITY, STATE, ZIP CODE: 1390 Richard Terrace S.D. 74 2/70

DEFECTIVE HEATER DATA

27-31 MODEL	GALS. 32-35	ELEM. 36 (S)	A7 37 (7)	BAKSPL 38 (B)	CLNOUT 39 (C)	TYPE 40	UNR. 41 (U,N,D)	COM. 42 (C)	MIL 43 (M)
P6D	65								

SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58	INSTALL. DATE 59-60	61-62	FAILURE DATE 63-64	65-66	MOS. 67-69	DIST. 70-72	CODE 73	DOL. 74-80
7707	70	1	F	05613	5	8	70	5	30	75	60	

REPL. HTR. DATA

1	2-25	AUTH. 26 (A)	27-31 MOD. - GAL. 32-35	EXPIRES 36-37	38-39	YEARS 40-41	SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58
T	DUP.		P6D65								

INSTALL. DATE 59-60 61-62 | 63-80 TITLE MR. PALENT 780 75 | 0022585 | 5/80-10

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U						LA		

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U						HA		

1	2-9	10-40 END USER'S NAME	41-59 ADDRESS
V	DUP.	Patent	332 Corpo Plaza

60-73 CITY	STATE 74-75	ZIP CODE 76-80	DESCRIPTION OF FAILURE
J 74			Leaks

DEALER NAME, ADDRESS, CITY AND STATE

REMARKS

DATE	SIGNATURE	SEND MORE FORMS	ENVELOPES
5 30 75		PSD-2501D ☐	☐

PSD-2501D-774

MAIL THIS COPY TO YOUR PRODUCT SERVICE BRANCH

6/2

EXHIBIT

PRODUCT SERVICE DIVISION • 825 LEHIGH AVENUE • UNION, NEW JERSEY 07083 • 201 686-9000 • TELEX 13-8771

A.O. Smith CORPORATION

September 5, 1975

Staten Island Supply Co.
1390 Richmond Terrace
Staten Island, New York 10310
Attention: Mr. Robert Schwimmer

Dear Mr. Schwimmer:

We have again received a large return of our water heater warranty restriction letters sent to your end user customers. These letters were returned by the post office because of incorrect addresses or customer is unknown.

Please check the following returns and advise us of correct name and address of the end user so that our guarantee extension records can be corrected and our warranty restriction letter sent out to the proper end user.

End User	2501 #	Credit Memo #
Mr. Pilot 976 Brady Pl. Staten Island, N.Y.	0022599	71-29015 - 8/6/75
Mr. Ment 5753 Del Ave. Staten Island, N.Y.	0052057	71-29015 - 8/6/75
Mr. Kank 102 Dence Pl. Staten Island, N.Y.	0052046	71-29015 - 8/6/75
Mr. Scepe 75 Pleasant Dr. Staten Island, N.Y.	0052038	71-29015 - 8/6/75
Mr. Utopia 188 Veri Drive Staten Island, N.Y.	00225 8	71-29015 8/6/75

Hall letter 9/5/75

EXHIBIT

End User	2501 #	Credit Memo #
Mr. Greer 201 38th Street Staten Island, N.Y.	0022597	71-29015 - 8/6/75
Mr. Amer 6051 Field Drive Staten Island, N.Y.	0052048	71-29015 - 8/6/75
Mr. App 354 Dards Lane Staten Island, N.Y.	0022594	71-29015 - 8/6/75
Mr. Lief 355 Prescott St. Staten Island, N.Y.	0022596	71-29015 - 8/6/75
Mr. Quire 29 Smith Road Staten Island, N.Y.	0022595	71-29015 - 8/6/75
Mr. A. Goldstein 189 Blacksmith Ave. Staten Island, N.Y.	0052044	71-29113 - 8/13/75

Would appreciate your supplying correct names and address as soon as possible.

Very truly yours,

A. O. SMITH CORPORATION

D. V. Hall
Manager - Eastern Branch
Product Service Division

DVH:np

EXHIBIT

PRODUCT SERVICE DIVISION · 825 LEHIGH AVENUE · UNION, NEW JERSEY 07083 · 201 686-9000 · TELEX 13-8771

A. O. Smith CORPORATION

AUGUST 11, 1975

MR. PILOT
976 BRADY PLACE
STATEN ISLAND, NY

DEAR MR. PILOT,

WE'RE SORRY TO LEARN THAT YOUR A. O. SMITH WATER HEATER HAD TO BE REPLACED. WE SINCERELY REGRET THE DIFFICULTIES THIS MUST HAVE CAUSED AND WE HOPE THAT THE NEW UNIT, SUPPLIED AT NO CHARGE UNDER THE TERMS OF OUR GUARANTEE, IS FUNCTIONING TO YOUR COMPLETE SATISFACTION. CHARGES FOR INSTALLATION AND DELIVERY OR FOR A MORE EXPENSIVE REPLACEMENT ARE EXCLUDED FROM THE GUARANTEE.

WE HOPE YOU WILL ACCEPT OUR ASSURANCE FOR YEARS OF USEFUL SERVICE FROM YOUR NEW WATER HEATER. IF NECESSARY PLEASE REFER TO OUR FILE NUMBER 29015.

VERY TRULY YOURS,

A. O. SMITH CORPORATION
PRODUCT SERVICE DIVISION

D. V. HALL, BRANCH MANAGER

DVH/F

EXHIBIT

PRODUCT SERVICE DIVISION
7250 SO. CICERO AVENUE • CHICAGO, ILLINOIS 60629

A. O. Smith CORPORATION

RETURNED TO SENDER
REASON CHECKED
Refused
Unclaimed
Addressee unknown
Insufficient address
No such street number
No such office in state
Do not remail in this envelope

a century forward

CHICAGO
AUG 1975
ILL.
10

///

EXHIBIT

(3) (4)

A.O. SMITH CORPORATION

WATER HEATER WARRANTY REPLACEMENT REPORT

DO NOT USE THIS FORM FOR PARTS REPLACEMENT

PLEASE MAIL THIS COPY (NO. 2) TO YOUR PRODUCT SERVICE BRANCH AND RETAIN HEATER UNTIL RECEIPT OF OUR INSTRUCTIONS WITHIN NEXT FEW DAYS

0022599

DISTRIBUTOR OR UTILITY NAME	1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	AOS ACCT. NO. 10-15	CUST. REFERENCE NO. 16-25
Steves Island Supply	S	1	2	[illegible]	482000	0022599

ADDRESS, CITY, STATE, ZIP CODE

1390 Richmond Ter. S I N.Y. 12/74

DEFECTIVE HEATER DATA

27-31 MODEL	GALS. 32-35	ELEM. 36 (S)	AT 37 (T)	BAKSPL 38 (B)	CLNOUT 39 (C)	TYPE 40	UNR. 41 (U,N,D)	COM. 42 (C)	M 43
PGD 40							U		

SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58	INSTALL. DATE 59-60	61-62	FAILURE DATE 63-64	65-66	MOS. 67-69	DIST. 70-72	CODE 73	DOL. 74-80
780	74			C5608	5	9	75	75	1			

REPL. HTR. DATA

1	2-25	AUTH. 26 (A)	27-31 MOD. - GAL. 32-35	EXPIRES 36-37	38-39	YEARS 40-41	SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58
T	DUP.		PGD 40	[illegible]				780	C75	3500	

INSTALL. DATE 59-60 61-62 — 63-80 TITLE: MR. PILOT

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U					—	LA		

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U						HA		

1	2-9	10-40 END USER'S NAME	41-59 ADDRESS
V	DUP.	Pilot	976 Brady Place

60-73 CITY	STATE 74-75	ZIP CODE 76-80	DESCRIPTION OF FAILURE
S I N Y			Leaks

DEALER NAME, ADDRESS, CITY AND STATE

REMARKS

DATE	SIGNATURE	SEND MORE FORMS	ENVELOPES
6 25 75	[signature]	☐ PSD-2501D	☐

PSD-2501D-7/74 & RATMAIL THIS COPY TO YOUR PRODUCT SERVICE BRANCH

RECEIVED DATE....6/30

EXHIBIT

PRODUCT SERVICE DIVISION · 825 LEHIGH AVENUE · UNION, NEW JERSEY 07083 · 201 686-9000 · TELEX 13-8771

A. O. SMITH CORPORATION

AUGUST 11, 1975

MR. MENT
5753 DEL AVE.
STATEN ISLAND, NY

DEAR MR. MENT,

WE'RE SORRY TO LEARN THAT YOUR A. O. SMITH WATER HEATER HAD TO BE REPLACED. WE SINCERELY REGRET THE DIFFICULTIES THIS MUST HAVE CAUSED AND WE HOPE THAT THE NEW UNIT, SUPPLIED AT NO CHARGE UNDER THE TERMS OF OUR GUARANTEE, IS FUNCTIONING TO YOUR COMPLETE SATISFACTION. CHARGES FOR INSTALLATION AND DELIVERY OR FOR A MORE EXPENSIVE REPLACEMENT ARE EXCLUDED FROM THE GUARANTEE.

YOUR NEW WATER HEATER DESCRIBED BELOW IS GUARANTEED FOR THE REMAINDER OF THE TERM COVERING YOUR ORIGINAL UNIT.

MODEL KGL 40
SERIAL NO. 880 75 L33197
ORIGINAL GUARANTEE - TEN YEARS
EXPIRATION DATE - AUGUST 1, 1984

WE'VE REGISTERED YOUR NEW WATER HEATER IN OUR GUARANTEE EXTENSION RECORDS IN CASE ANY QUESTIONS CONCERNING IT SHOULD ARISE IN THE FUTURE. IF NECESSARY PLEASE REFER TO OUR FILE NUMBER 29015.

VERY TRULY YOURS,

A. O. SMITH CORPORATION
PRODUCT SERVICE DIVISION

D. V. HALL, BRANCH MANAGER

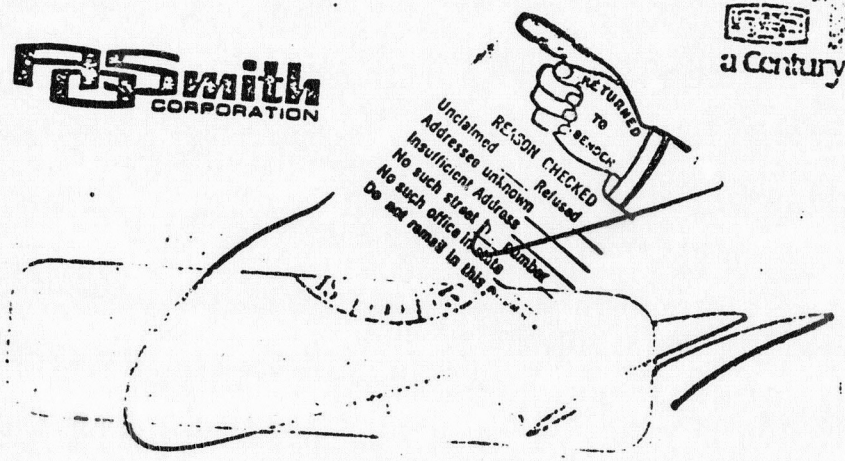
DVH/F

EXHIBIT

PRODUCT SERVICE DIVISION
7250 SO. CICERO AVENUE • CHICAGO, ILLINOIS 60629

A.O. Smith CORPORATION

a Century Forward



114

EXHIBIT

A.O. Smith CORPORATION

WATER HEATER WARRANTY REPLACEMENT REPORT

DO NOT USE THIS FORM FOR PARTS REPLACEMENT

PLEASE MAIL THIS COPY (NO. 2) TO YOUR PRODUCT SERVICE BRANCH AND RETAIN HEATER UNTIL RECEIPT OF OUR INSTRUCTIONS WITHIN NEXT FEW DAYS

0052047

DISTRIBUTOR OR UTILITY NAME	1	SEQ. 2-3	BR 4	CREDIT NO. 5-8	AOS ACCT. NO. 10-15	CUST. REFERENCE NO. 16-25
Shell Wind Supply Co	S	2	2	[illegible]	482000	0052047

ADDRESS, CITY, STATE, ZIP CODE: 1390 Richmond Terrace S.I. NY 4/74

DEFECTIVE HEATER DATA

27-31 MODEL	GALS. 32-35	ELEM. 36 (S)	A7 37 (7)	BAKSPL 38 (B)	CLNOUT 39 (C)	TYPE 40	UNR. 41 (U,N,D)	COM. 42 (C)	MIL 43 (M)
KGL 40									

SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58	INSTALL. DATE 59-60	61-62	FAILURE DATE 63-64	65-66	MOS. 67-69	DIST. 70-72	CODE 73	DOL. 74-80
816 H	74	-	73133		8	3	74	A 30	75 10			

REPL. HTR. DATA

1	2-25	AUTH. 26 (A)	27-31 MOD. - GAL. 32-35	EXPIRES 36-37	38-39	YEARS 40-41	SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58
T	DUP.		KGL 40	8	80		L -	75	3	9	7

INSTALL. DATE 59-60	61-62	63-80 TITLE
		MR. MENT, 8/84 N

	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
1 U						LA		

	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
1 U						HA		

1	2-9	10-40 END USER'S NAME	41-59 ADDRESS
V	DUP.	Hunkerman Ment	5753 Del Ave

60-73 CITY	STATE 74-75	ZIP CODE 76-80	DESCRIPTION OF FAILURE
S.I. N.Y.			

DEALER NAME, ADDRESS, CITY AND STATE: Zinna Plumbing Supply Co. Inc

REMARKS: 2389-91 Coney Island Ave

DATE	SIGNATURE	SEND MORE FORMS	ENVELOPES
6 30 75	[signature]	☐ PSD-2501D	☐

PSD-2501D-77 MAIL THIS COPY TO YOUR PRODUCT SERVICE BRANCH

MODEL & RATING PLATE

RECEIVED DATE 7-2

EXHIBIT

PRODUCT SERVICE DIVISION · 825 LEHIGH AVENUE · UNION, NEW JERSEY 07083 · 201 686-9000 · TELEX 13-8771

A. O. SMITH CORPORATION

AUGUST 11, 1975

MR. KANK
102 DENCE PL.
STATEN ISLAND, NY

DEAR MR. KANK,

WE'RE SORRY TO LEARN THAT YOUR A. O. SMITH WATER HEATER HAD TO BE REPLACED. WE SINCERELY REGRET THE DIFFICULTIES THIS MUST HAVE CAUSED AND WE HOPE THAT THE NEW UNIT, SUPPLIED AT NO CHARGE UNDER THE TERMS OF OUR GUARANTEE, IS FUNCTIONING TO YOUR COMPLETE SATISFACTION. CHARGES FOR INSTALLATION AND DELIVERY OR FOR A MORE EXPENSIVE REPLACEMENT ARE EXCLUDED FROM THE GUARANTEE.

YOUR NEW WATER HEATER DESCRIBED BELOW IS GUARANTEED FOR THE REMAINDER OF THE TERM COVERING YOUR ORIGINAL UNIT.

MODEL PGD 30
SERIAL NO. 780 75 F99281
ORIGINAL GUARANTEE - TEN YEARS
EXPIRATION DATE - MAY 1, 1984

WE'VE REGISTERED YOUR NEW WATER HEATER IN OUR GUARANTEE EXTENSION RECORDS IN CASE ANY QUESTIONS CONCERNING IT SHOULD ARISE IN THE FUTURE. IF NECESSARY PLEASE REFER TO OUR FILE NUMBER 29015.

VERY TRULY YOURS,

A. O. SMITH CORPORATION
PRODUCT SERVICE DIVISION

D. V. HALL, BRANCH MANAGER

DVH/F

EXHIBIT

WATER HEATER WARRANTY REPLACEMENT REPORT

DO NOT USE THIS FORM FOR PARTS REPLACEMENT

PLEASE MAIL THIS COPY (NO.2) TO YOUR PRODUCT SERVICE BRANCH AND RETAIN HEATER UNTIL RECEIPT OF OUR INSTRUCTIONS WITHIN NEXT FEW DAYS

0052046

DISTRIBUTOR OR UTILITY NAME	1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	AOS ACCT. NO. 10-15	CUST. REFERENCE NO. 16-25
Hall Island Supply	S	32		09010	482000	005-2046

ADDRESS, CITY, STATE, ZIP CODE: 1390 Richmond Terrace SI NY 2/74

DEFECTIVE HEATER DATA

27-31 MODEL	GALS. 32-35	ELEM. 36 (S)	A7 37 (7)	BAKSPL 38 (B)	CLNOUT 39 (C)	TYPE 40	UNR. 41 (U,N,D)	COM. 42 (C)	MIL 43 (M)
PGD30									

SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58	INSTALL. DATE 59-60	61-62	FAILURE DATE 63-64	65-66	MOS. 67-69	DIST. 70-72	CODE 73	DOL. 74-80
750	F	74	J	8199	5	8	74	6 30	75	13		

REPL. HTR. DATA

1	2-25	AUTH. 26 (A)	27-31 MOD. - GAL. 32-35	EXPIRES 36-37	38-39	YEARS 40-41	SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58
T	DUP.		PGD30		750	F	- 75	9	9281		

INSTALL. DATE 59-60 61-62 | 63-80 TITLE: MR. HANK, 5/24-10

	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
1 U						LA		
1 U						HA		

	2-9	10-40 END USER'S NAME	41-59 ADDRESS
1 V	DUP.	Hankerd Hanor	102 Dewey Pl

60-73 CITY	STATE 74-75	ZIP CODE 76-80	DESCRIPTION OF FAILURE
SI. N.Y.			

DEALER NAME, ADDRESS, CITY AND STATE: Joshs Plumbing Supply

REMARKS: 3"89-91 Copper Tank Type

DATE	SIGNATURE	SEND MORE FORMS	ENVELOPES
1-20-75		☐ PSD-2501D	☐

PSD-2501D-774 MAIL THIS COPY TO YOUR PRODUCT SERVICE BRANCH

MODEL & RATING PLATE
RECEIVED DATE 2/2

EXHIBIT

PRODUCT SERVICE DIVISION · 825 LEHIGH AVENUE · UNION, NEW JERSEY 07083 · 201 686-9000 · TELEX 13-8771

A. O. Smith CORPORATION

AUGUST 11, 1975

MR. SCEPE
75 PLEASANT DR.
STATEN ISLAND, NY

DEAR MR. SCEPE,

WE'RE SORRY TO LEARN THAT YOUR A. O. SMITH WATER HEATER HAD TO BE REPLACED. WE SINCERELY REGRET THE DIFFICULTIES THIS MUST HAVE CAUSED AND WE HOPE THAT THE NEW UNIT, SUPPLIED AT NO CHARGE UNDER THE TERMS OF OUR GUARANTEE, IS FUNCTIONING TO YOUR COMPLETE SATISFACTION. CHARGES FOR INSTALLATION AND DELIVERY OR FOR A MORE EXPENSIVE REPLACEMENT ARE EXCLUDED FROM THE GUARANTEE.

YOUR NEW WATER HEATER DESCRIBED BELOW IS GUARANTEED FOR THE REMAINDER OF THE TERM COVERING YOUR ORIGINAL UNIT.

MODEL PGD 50
SERIAL NO. 780 75 D39918
ORIGINAL GUARANTEE - TEN YEARS
EXPIRATION DATE - AUGUST 1, 1981

WE'VE REGISTERED YOUR NEW WATER HEATER IN OUR GUARANTEE EXTENSION RECORDS IN CASE ANY QUESTIONS CONCERNING IT SHOULD ARISE IN THE FUTURE. IF NECESSARY PLEASE REFER TO OUR FILE NUMBER 29015.

VERY TRULY YOURS,

A. O. SMITH CORPORATION
PRODUCT SERVICE DIVISION

D. V. HALL, BRANCH MANAGER

DVH/F

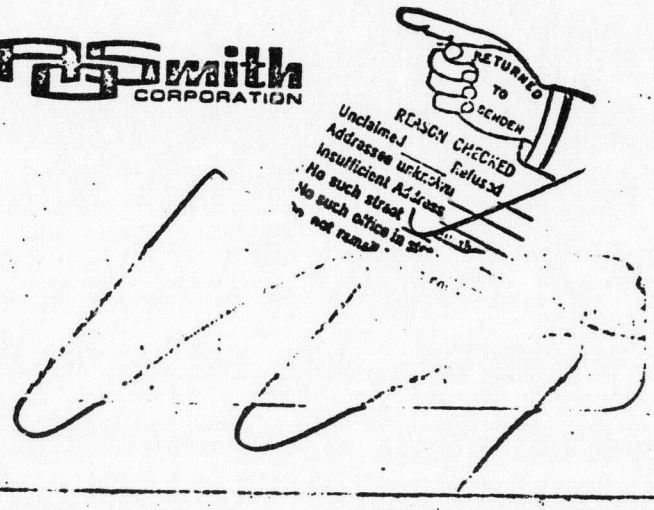
EXHIBIT

PRODUCT SERVICE DIVISION
7250 SO. CICERO AVENUE • CHICAGO, ILLINOIS 60629

A.O. Smith CORPORATION

a Century Forward

CHICAGO ILL AUG 11 '75



619

EXHIBIT

A.O. Smith CORPORATION

WATER HEATER WARRANTY REPLACEMENT REPORT

DO NOT USE THIS FORM FOR PARTS REPLACEMENT

PLEASE MAIL THIS COPY (NO. 2) TO YOUR PRODUCT SERVICE BRANCH AND RETAIN HEATER UNTIL RECEIPT OF OUR INSTRUCTIONS WITHIN NEXT FEW DAYS

0052038

DISTRIBUTOR OR UTILITY NAME	1	SEQ. 2-3	BR 4	CREDIT NO. 5-8	AOS ACCT. NO. 10-15	CUST. REFERENCE NO. 16-25
STATEN ISLAND SUPPLY CO. INC. 1390 RICHMOND TERRACE	S	62		[illegible]	482000	0052038

ADDRESS STATEN ISLAND, N. Y. 10310 — STATE, ZIP CODE
TEL. GIBRALTER 2-1106

8/71

DEFECTIVE HEATER DATA

27-31 MODEL	GALS. 32-35	ELEM. 36 (S)	A7 37 (7)	BAKSPL 38 (B)	CLNOUT 39 (C)	TYPE 40	UNR. 41 (U,N,D)	COM. 42 (C)	MIL 43 (M)
PGD 50									

SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58	INSTALL. DATE 59-60	61-62	FAILURE DATE 63-64	65-66	MOS. 67-69	DIST. 70-72	CODE 73	DOL. 74-80
1780	M-71	0	3	20224	8	71	7	75	47			

REPL. HEATER DATA

1	2-25	AUTH. 26 (A)	27-31 MOD. - GAL. 32-35	EXPIRES 36-37	38-39	YEARS 40-41	SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58
T	DUP.		PGD 50	78		D	75	3	4	8	

INSTALL. DATE 59-60 61-62 — 63-80 TITLE: MR. SCEPE, — 8/81-10

	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
1 U						LA		

	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
1 U						HA		

1	2-9	10-40 END USER'S NAME	41-59 ADDRESS
V	DUP.	Scepe	75 Pleasant Drive

60-73 CITY	STATE 74-75	ZIP CODE 76-80	DESCRIPTION OF FAILURE
Staten Island, N.Y.			Leak

DEALER NAME, ADDRESS, CITY AND STATE

REMARKS

Ltd

DATE	SIGNATURE	SEND MORE FORMS	ENVELOPES
7 18 71	Edward [illegible]	☐ PSD-2501D	☐

PLEASE MAIL MODEL & RATING PLATE

MAIL THIS COPY TO YOUR PRODUCT SERVICE BRANCH

RECEIVED DATE.... 7/21

EXHIBIT

PRODUCT SERVICE DIVISION · 825 LEHIGH AVENUE · UNION, NEW JERSEY 07083 · 201 686-3000 · TELEX 13-8771

A. O. SMITH CORPORATION

AUGUST 11, 1975

MR. UTOPIA
188 VERI DRIVE
STATEN ISLAND, NY

DEAR MR. UTOPIA,

WE'RE SORRY TO LEARN THAT YOUR A. O. SMITH WATER HEATER HAD TO BE REPLACED. WE SINCERELY REGRET THE DIFFICULTIES THIS MUST HAVE CAUSED AND WE HOPE THAT THE NEW UNIT, SUPPLIED AT NO CHARGE UNDER THE TERMS OF OUR GUARANTEE, IS FUNCTIONING TO YOUR COMPLETE SATISFACTION. CHARGES FOR INSTALLATION AND DELIVERY OR FOR A MORE EXPENSIVE REPLACEMENT ARE EXCLUDED FROM THE GUARANTEE.

YOUR NEW WATER HEATER DESCRIBED BELOW IS GUARANTEED FOR THE REMAINDER OF THE TERM COVERING YOUR ORIGINAL UNIT.

MODEL PGD 50
SERIAL NO. 780 75 M26503
ORIGINAL GUARANTEE - TEN YEARS
EXPIRATION DATE - MAY 1, 1979

WE'VE REGISTERED YOUR NEW WATER HEATER IN OUR GUARANTEE EXTENSION RECORDS IN CASE ANY QUESTIONS CONCERNING IT SHOULD ARISE IN THE FUTURE. IF NECESSARY PLEASE REFER TO OUR FILE NUMBER 29015.

VERY TRULY YOURS,

A. O. SMITH CORPORATION
PRODUCT SERVICE DIVISION

D. V. HALL, BRANCH MANAGER

DVH/F

EXHIBIT

122

PRODUCT SERVICE DIVISION
7250 SO. CICERO AVENUE • CHICAGO, ILLINOIS 60629

A.O. Smith CORPORATION

a century forward

EXHIBIT

WATER HEATER WARRANTY REPLACEMENT REPORT

DO NOT USE THIS FORM FOR PARTS REPLACEMENT

PLEASE MAIL THIS COPY (NO. 2) TO YOUR PRODUCT SERVICE BRANCH AND RETAIN HEATER UNTIL RECEIPT OF OUR INSTRUCTIONS WITHIN NEXT FEW DAYS

0022598

DISTRIBUTOR OR UTILITY NAME	1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ADS ACCT. NO. 10-15	CUST. REFERENCE NO. 16-25
Sales Wood Supply Co	S	79	2	[illegible]	482000	002259P

ADDRESS, CITY, STATE, ZIP CODE: 1390 Richmond Terrace S.I. NY 1/69

DEFECTIVE HEATER DATA

27-31 MODEL	GALS. 32-35	ELEM. 36 (S)	A7 37 (7)	BAKSPL 38 (B)	CLNOUT 39 (C)	TYPE 40	UNR. 41 (U,N,D)	COM. 42 (C)	MIL 43 (M)
PGD50									

SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58	INSTALL. DATE 59-60 / 61-62	FAILURE DATE 63-64 / 65-66	MOS. 67-69	DIST. 70-72	CODE 73	DOL. 74-80
77069	1E	20219			5/8	6/25	73			

REPL. HEATER DATA

1	2-25	AUTH. 26 (A)	27-31 MOD. - GAL. 32-35	EXPIRES 36-37 / 38-39	YEARS 40-41	SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58
T	DUP.		PGD50	780	M		75	26	03	

INSTALL. DATE 59-60 / 61-62 — 63-80 TITLE: MR UTOPIA — 6/75-10

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U						LA		

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U						HA		

1	2-9	10-40 END USER'S NAME	41-59 ADDRESS
V	DUP.	Utopia	188 Veri Drive

60-73 CITY	STATE 74-75	ZIP CODE 76-80	DESCRIPTION OF FAILURE
S I NY			Leak

DEALER NAME, ADDRESS, CITY AND STATE

REMARKS

DATE: 1 75 76 — SIGNATURE: Edward [illegible]

SEND MORE FORMS: ☐ PSD-2501D — ENVELOPES: ☐

PSD-2501D-1 & RA MAIL THIS COPY TO YOUR PRODUCT SERVICE BRANCH

RECEIVED DATE... 1/31

EXHIBIT

PRODUCT SERVICE DIVISION · 825 LEHIGH AVENUE · UNION, NEW JERSEY 07083 · 201 686-9000 · TELEX 13-8771

A.O. Smith CORPORATION

AUGUST 11, 1975

MR. GREER
201 38TH ST.
STATEN ISLAND, NY

DEAR MR. GREER,

WE'RE SORRY TO LEARN THAT YOUR A. O. SMITH WATER HEATER HAD TO BE REPLACED. WE SINCERELY REGRET THE DIFFICULTIES THIS MUST HAVE CAUSED AND WE HOPE THAT THE NEW UNIT, SUPPLIED AT NO CHARGE UNDER THE TERMS OF OUR GUARANTEE, IS FUNCTIONING TO YOUR COMPLETE SATISFACTION. CHARGES FOR INSTALLATION AND DELIVERY OR FOR A MORE EXPENSIVE REPLACEMENT ARE EXCLUDED FROM THE GUARANTEE.

YOUR NEW WATER HEATER DESCRIBED BELOW IS GUARANTEED FOR THE REMAINDER OF THE TERM COVERING YOUR ORIGINAL UNIT.

MODEL PGD 30
SERIAL NO. 780 75 A00621
ORIGINAL GUARANTEE - TEN YEARS
EXPIRATION DATE - OCTOBER 1, 1978

WE'VE REGISTERED YOUR NEW WATER HEATER IN OUR GUARANTEE EXTENSION RECORDS IN CASE ANY QUESTIONS CONCERNING IT SHOULD ARISE IN THE FUTURE. IF NECESSARY PLEASE REFER TO OUR FILE NUMBER 29015.

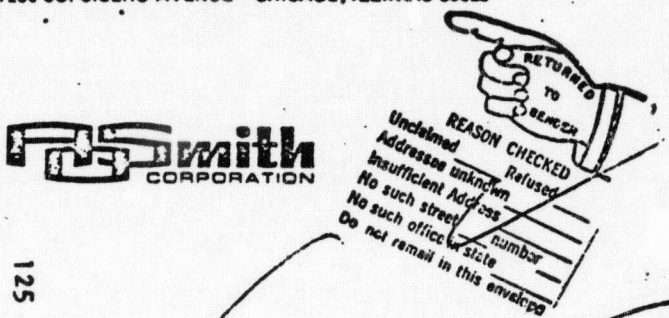
VERY TRULY YOURS,

A. O. SMITH CORPORATION
PRODUCT SERVICE DIVISION

D. V. HALL, BRANCH MANAGER

DVH/F

PRODUCT SERVICE DIVISION
7250 SO. CICERO AVENUE • CHICAGO, ILLINOIS 60629



Smith CORPORATION

a Century Forward

CHICAGO ILL AUG 1 '79 10

125

EXHIBIT

A.O. Smith CORPORATION

WATER HEATER WARRANTY REPLACEMENT REPORT

DO NOT USE THIS FORM FOR PARTS REPLACEMENT

PLEASE MAIL THIS COPY (NO. 2) TO YOUR PRODUCT SERVICE BRANCH AND RETAIN HEATER UNTIL RECEIPT OF OUR INSTRUCTIONS WITHIN NEXT FEW DAYS

0022597

DISTRIBUTOR OR UTILITY NAME	1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE NO. 16-25
Staten Island Supply Co	S	9[illegible]	2	[illegible]	492000	0022597

ADDRESS, CITY, STATE, ZIP CODE: 1390 Richmond Terrace S I N Y 10310 6/68

DEFECTIVE HEATER DATA

27-31 MODEL	GALS. 32-35	ELEM. 36 (S)	37 (T)	BAKSPL 38 (B)	CLHOUT 39 (C)	TYPE 40	UNR. 41 (U,N,O)	COM. 42 (C)	MIL 43 (M)
PGD 30									

SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58	INSTALL. DATE 59-60 / 61-62	FAILURE DATE 63-64 / 65-66	MOS. 67-69	DIST. 70-72	CODE 73	DOL. 74-80
76068	2K	04	05	0	10 / 68	6 / 78	75	80		

REPL. HTR. DATA

1	25	AUTH. 26 (A)	27-31 MOD. - GAL. 32-35	EXPIRES 36-37	YEARS	SERIES	YR.	LN.	MO.	SERIAL 54-58
T	DUP.		PGD 30	+.780-A75-00621						

INSTALL. DATE 58-60 / 61-62 — 63-80 TITLE: MR GREER — 10/78-10

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 93	DOL. 74-80
U						LA		

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 93	DOL. 74-80
U						HA		

1	2-9	10-40 END USER'S NAME	41-59 ADDRESS
V	DUP.	Greer	201 38th St

60-73 CITY	STATE 74-75	ZIP CODE 76-80	DESCRIPTION OF FAILURE
Staten Island	N Y		Leaks

DEALER NAME, ADDRESS, CITY AND STATE:

REMARKS:

DATE	SIGNATURE	SEND MORE FORMS	ENVELOPES
6 25 78	[signature]	☐ PSD-2501D	☐

PSD-2501D-7/74 MODEL & RATING PLATE

MAIL THIS COPY TO YOUR PRODUCT SERVICE BRANCH

RECEIVED DATE...6/30

EXHIBIT

PRODUCT SERVICE DIVISION · 875 LEHIGH AVENUE · UNION, NEW JERSEY 07083 · 201 686-9000 · TELEX 13-8771

A.O. Smith CORPORATION

AUGUST 11, 1975

MR. AMER
6051 FIELD DR.
STATEN ISLAND, NY

DEAR MR. AMER,

WE'RE SORRY TO LEARN THAT YOUR A. O. SMITH WATER HEATER HAD TO BE REPLACED. WE SINCERELY REGRET THE DIFFICULTIES THIS MUST HAVE CAUSED AND WE HOPE THAT THE NEW UNIT, SUPPLIED AT NO CHARGE UNDER THE TERMS OF OUR GUARANTEE, IS FUNCTIONING TO YOUR COMPLETE SATISFACTION. CHARGES FOR INSTALLATION AND DELIVERY OR FOR A MORE EXPENSIVE REPLACEMENT ARE EXCLUDED FROM THE GUARANTEE.

YOUR NEW WATER HEATER DESCRIBED BELOW IS GUARANTEED FOR THE REMAINDER OF THE TERM COVERING YOUR ORIGINAL UNIT.

MODEL PGD 40
SERIAL NO. 780 74 J80221
ORIGINAL GUARANTEE - TEN YEARS
EXPIRATION DATE - SEPTEMBER 1, 1978

WE'VE REGISTERED YOUR NEW WATER HEATER IN OUR GUARANTEE EXTENSION RECORDS IN CASE ANY QUESTIONS CONCERNING IT SHOULD ARISE IN THE FUTURE. IF NECESSARY PLEASE REFER TO OUR FILE NUMBER 29015.

VERY TRULY YOURS,

A. O. SMITH CORPORATION
PRODUCT SERVICE DIVISION

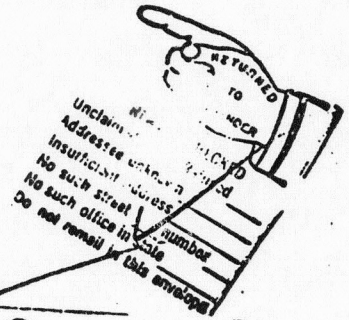
D. V. HALL, BRANCH MANAGER

DVH/F

EXHIBIT

PRODUCT SERVICE DIVISION
7250 SO. CICERO AVENUE · CHICAGO, ILLINOIS 60629

A.O. Smith CORPORATION



a century forward

128

EXHIBIT

WATER HEATER WARRANTY REPLACEMENT REPORT

DO NOT USE THIS FORM FOR PARTS REPLACEMENT

PLEASE MAIL THIS COPY (NO.2) TO YOUR PRODUCT SERVICE BRANCH AND RETAIN HEATER UNTIL RECEIPT OF OUR INSTRUCTIONS WITHIN NEXT FEW DAYS

0052048

DISTRIBUTOR OR UTILITY NAME	1	SEQ. 2-3	BR 4	CREDIT NO. 5-8	AOS ACCT. NO. 10-15	CUST. REFERENCE NO. 16-25
Suffern Wood Supply	S	10	2	[illegible]	492000	0052048

ADDRESS, CITY, STATE, ZIP CODE: 1390 Richland Terrace Sl NY 5/68

DEFECTIVE HEATER DATA

27-31 MODEL	GALS. 32-35	ELEM. 36 (S)	37 (T)	BAKSPL 38 (B)	CLNOUT 39 (C)	TYPE 40	UNR. 41 (U,N,D)	COM. 42 (C)	MIL 43 (M)
PGD	40								

SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58	INSTALL. DATE 59-60	61-62	FAILURE DATE 63-64	65-66	MOS. 67-69	DIST. 70-72	CODE 73	DOL. 74-80
7608	-	1	J	22081	9	5	68	1 30	75	91		

REPL. HTR. DATA

1	2-25	AUTH. 26 (A)	27-31 MOD. - GAL. 32-35	EXPIRES 36-37	38-39	YEARS 40-41	SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58
T	DUP.		PGD 40	18		74	8150	2J	6	02	71

INSTALL. DATE 59-60 61-62 | 63-80 TITLE: MR. AMER 9/28-70

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-48 DESCRIPTION	CODE 73	DOL. 74-80
U						LA		

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U						HA		

1	2-9	10-40 END USER'S NAME	41-59 ADDRESS
V	DUP.	Ames Hackensack	6051 Field Dr.

60-73 CITY	STATE 74-75	ZIP CODE 76-80	DESCRIPTION OF FAILURE
S.J., NY			

DEALER NAME, ADDRESS, CITY AND STATE: Hackney Plumbing Supply

REMARKS: 37-19 Jamaica St Flushing N.Y.

DATE	SIGNATURE	SEND MORE FORMS	ENVELOPES
3-75	Edward [illegible]	☐ PSD-2501D	☐

PSD-2501C (7/74) MODEL & SERIAL PLATE MAIL THIS COPY TO YOUR PRODUCT SERVICE BRANCH

RECEIVED DATE 3-7

EXHIBIT

PRODUCT SERVICE DIVISION · 825 LEHIGH AVENUE · UNION, NEW JERSEY 07083 · 201 686-9000 · TELEX 13-8771

A.O. Smith CORPORATION

AUGUST 11, 1975

MR. APP
354 DARDS LANE
STATEN ISLAND, NY

DEAR MR. APP,

WE'RE SORRY TO LEARN THAT YOUR A. O. SMITH WATER HEATER HAD TO BE REPLACED. WE SINCERELY REGRET THE DIFFICULTIES THIS MUST HAVE CAUSED AND WE HOPE THAT THE NEW UNIT, SUPPLIED AT NO CHARGE UNDER THE TERMS OF OUR GUARANTEE, IS FUNCTIONING TO YOUR COMPLETE SATISFACTION. CHARGES FOR INSTALLATION AND DELIVERY OR FOR A MORE EXPENSIVE REPLACEMENT ARE EXCLUDED FROM THE GUARANTEE.

YOUR NEW WATER HEATER DESCRIBED BELOW IS GUARANTEED FOR THE REMAINDER OF THE TERM COVERING YOUR ORIGINAL UNIT.

MODEL PGD 50
SERIAL NO. 780 75 C00633
ORIGINAL GUARANTEE - TEN YEARS
EXPIRATION DATE - JULY 1, 1978

WE'VE REGISTERED YOUR NEW WATER HEATER IN OUR GUARANTEE EXTENSION RECORDS IN CASE ANY QUESTIONS CONCERNING IT SHOULD ARISE IN THE FUTURE. IF NECESSARY PLEASE REFER TO OUR FILE NUMBER 29015.

VERY TRULY YOURS,

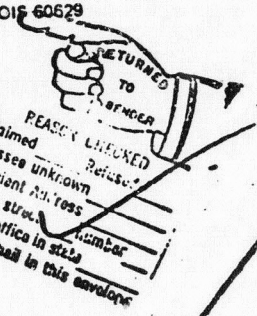
A. O. SMITH CORPORATION
PRODUCT SERVICE DIVISION

D. V. HALL, BRANCH MANAGER

DVH/F

EXHIBIT

PRODUCT SERVICE DIVISION
7250 SO. CICERO AVENUE • CHICAGO, ILLINOIS 60629



A.O. Smith CORPORATION

a century forward

CHICAGO
AUG 11 '75
ILL.

10

131

131

EXHIBIT

A.O. Smith CORPORATION

WATER HEATER WARRANTY REPLACEMENT REPORT

DO NOT USE THIS FORM FOR PARTS REPLACEMENT

PLEASE MAIL THIS COPY (NO. 2) TO YOUR PRODUCT SERVICE BRANCH AND RETAIN HEATER UNTIL RECEIPT OF OUR INSTRUCTIONS WITHIN NEXT FEW DAYS

0022594

DISTRIBUTOR OR UTILITY NAME	1	SEQ. 2-3	BR 4	CREDIT NO. 5-8	AOS ACCT. NO. 10-15	CUST. REFERENCE NO. 16-25
STATEN ISLAND SUPPLY CO. INC. 1390 RICHMOND TERRACE	S	11	2	0090 1C	4482000	0022594

ADDRESS STATEN ISLAND, N. Y. 10310 TEL: GIBRALTER 2-1105

4/68

DEFECTIVE HEATER DATA

27-31 MODEL	GALS. 32-35	ELEM. 36 (S)	A7 37 (7)	BAKSPL 38 (B)	CLNOUT 39 (C)	TYPE 40	UNR. 41 (U,N,D)	COM. 42 (C)	MIL 43 (M)
PGD 50									

SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58	INSTALL. DATE 59-60 / 61-62	FAILURE DATE 63-64 / 65-66	MOS. 67-69	DIST. 70-72	CODE 73	DOL. 74-80
76068	21	10	33	93	7 / 4	6 / 75	83			

REPL. HTR. DATA

1	2-25	AUTH. 26 (A)	27-31 MOD. - GAL. 32-35	EXPIRES 36-37 / 38-39	YEARS 40-41	SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58
T	DUP.		PGD 50	8 / 15	6	500000	78	0 -	07	00

INSTALL. DATE 58-80 / 61-62 — 63-80 TITLE: MR. APP — 7/78-10

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U						LA		

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U						HA		

1	2-9	10-40 END USER'S NAME	41-59 ADDRESS
V	DUP.	App	354 Durds Ave

60-73 CITY	STATE 74-75	ZIP CODE 76-80	DESCRIPTION OF FAILURE
SI NY			Leaks

DEALER NAME, ADDRESS, CITY AND STATE

REMARKS

DATE	SIGNATURE	SEND MORE FORMS	ENVELOPES
6-11-78	[signature]	PSD-2501D ☐	☐

PSD-2501D-77 MODEL & RATING PLATE MAIL THIS COPY TO YOUR PRODUCT SERVICE BRANCH

RECEIVED DATE...6-13

EXHIBIT

PRODUCT SERVICE DIVISION • 825 LEHIGH AVENUE • UNION, NEW JERSEY 07083 • 201 686-9000 • TELEX 13-8771

A. O. SMITH CORPORATION

AUGUST 11, 1975

MR. LIEF
355 PRESCOTT ST.
STATEN ISLAND, NY

DEAR MR. LIEF,

WE'RE SORRY TO LEARN THAT YOUR A. O. SMITH WATER HEATER HAD TO BE REPLACED. WE SINCERELY REGRET THE DIFFICULTIES THIS MUST HAVE CAUSED AND WE HOPE THAT THE NEW UNIT, SUPPLIED AT NO CHARGE UNDER THE TERMS OF OUR GUARANTEE, IS FUNCTIONING TO YOUR COMPLETE SATISFACTION. CHARGES FOR INSTALLATION AND DELIVERY OR FOR A MORE EXPENSIVE REPLACEMENT ARE EXCLUDED FROM THE GUARANTEE.

YOUR NEW WATER HEATER DESCRIBED BELOW IS GUARANTEED FOR THE REMAINDER OF THE TERM COVERING YOUR ORIGINAL UNIT.

MODEL PGDL 30
SERIAL NO. 780 75 A02566
ORIGINAL GUARANTEE - TEN YEARS
EXPIRATION DATE - APRIL 1, 1977

WE'VE REGISTERED YOUR NEW WATER HEATER IN OUR GUARANTEE EXTENSION RECORDS IN CASE ANY QUESTIONS CONCERNING IT SHOULD ARISE IN THE FUTURE. IF NECESSARY PLEASE REFER TO OUR FILE NUMBER 29015.

VERY TRULY YOURS,

A. O. SMITH CORPORATION
PRODUCT SERVICE DIVISION

D. V. HALL, BRANCH MANAGER

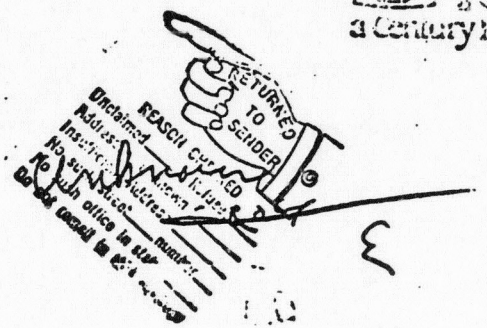
DVH/F

EXHIBIT

PRODUCT SERVICE DIVISION
7250 SO. CICERO AVENUE • CHICAGO, ILLINOIS 60629

A.O. Smith CORPORATION

a Century Forward



CHICAGO
AUG 1 '75
ILL.

10

134

EXHIBIT

PSSwindle CORPORATION

WATER HEATER WARRANTY REPLACEMENT REPORT

DO NOT USE THIS FORM FOR PARTS REPLACEMENT

PLEASE MAIL THIS COPY (NO. 2) TO YOUR PRODUCT SERVICE BRANCH AND RETAIN HEATER UNTIL RECEIPT OF OUR INSTRUCTIONS WITHIN NEXT FEW DAYS

0022596

DISTRIBUTOR OR UTILITY NAME: [illegible] SUPPLY CO. INC.
1390 RICHMOND TERRACE

ADDRESS, CITY, STATE, ZIP CODE: , 10310
TEL. GIBRALTER 2-1106

1	SEQ. 2-3	BR 4	CREDIT NO. 5-8	AOS ACCT. NO. 10-15	CUST. REFERENCE NO. 16-25
S	12	2	[illegible]	432000	0022596

2/67

DEFECTIVE HEATER DATA

27-31 MODEL	GALS. 32-35	ELEM. 36 (S)	A7 37 (7)	BAKSPL 38 (B)	CLNOUT 39 (C)	TYPE 40	UNR. 41 (U,N,D)	COM. 42 (C)	MIL 43 (M)
PGDL 30									

SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58	INSTALL. DATE 59-60 / 61-62	FAILURE DATE 63-64 / 65-66	MOS. 67-69	DIST. 70-72	CODE 73	DOL. 74-80
750	G	1167	1	F00344	4 3	6 7	6 9	75	98	

REPL. HTR. DATA

1	2-25	AUTH. 26 (A)	27-31 MOD. - GAL. 32-35	EXPIRES 36-37 / 38	1 YEARS	SERIES	YR.	LN.	MO.	SERIAL
T	DUP.		PGDL 30	[illegible]		750	A7	5	02	566

INSTALL. DATE 59-60 / 61-62 — 63-80 TITLE: MR. CIEF

4/77-0

	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
1 U						LA		

	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
1 U						HA		

1 V	2-9 DUP.	10-40 END USER'S NAME	41-59 ADDRESS
		Sul	355 Prescott St

60-73 CITY: L I [illegible] — STATE 74-75 — ZIP CODE 76-80 — DESCRIPTION OF FAILURE: Leaks

DEALER NAME, ADDRESS, CITY AND STATE:

REMARKS:

DATE	SIGNATURE	SEND MORE FORMS	PSD-2501D	ENVELOPES
6/16/75	[signature]	☐		☐

PSD-2501D-1 MODEL & RATING

MAIL THIS COPY TO YOUR PRODUCT SERVICE BRANCH

RECEIVED DATE 6/17/75

EXHIBIT

PRODUCT SERVICE DIVISION · 825 LEHIGH AVENUE · UNION, NEW JERSEY 07083 · 201 686-9000 · TELEX 13-8771

A. O. Smith CORPORATION

AUGUST 11, 1975

MR. QUIRE
29 SMITH RD.
STATEN ISLAND, NY

DEAR MR. QUIRE,

WE'RE SORRY TO LEARN THAT YOUR A. O. SMITH WATER HEATER HAD TO BE REPLACED. WE SINCERELY REGRET THE DIFFICULTIES THIS MUST HAVE CAUSED AND WE HOPE THAT THE NEW UNIT, SUPPLIED AT NO CHARGE UNDER THE TERMS OF OUR GUARANTEE, IS FUNCTIONING TO YOUR COMPLETE SATISFACTION. CHARGES FOR INSTALLATION AND DELIVERY OR FOR A MORE EXPENSIVE REPLACEMENT ARE EXCLUDED FROM THE GUARANTEE.

YOUR NEW WATER HEATER DESCRIBED BELOW IS GUARANTEED FOR THE REMAINDER OF THE TERM COVERING YOUR ORIGINAL UNIT.

MODEL PGD 50
SERIAL NO. 780 75 E23275
ORIGINAL GUARANTEE - TEN YEARS
EXPIRATION DATE - AUGUST 1, 1976

WE'VE REGISTERED YOUR NEW WATER HEATER IN OUR GUARANTEE EXTENSION RECORDS IN CASE ANY QUESTIONS CONCERNING IT SHOULD ARISE IN THE FUTURE. IF NECESSARY PLEASE REFER TO OUR FILE NUMBER 29015.

VERY TRULY YOURS,

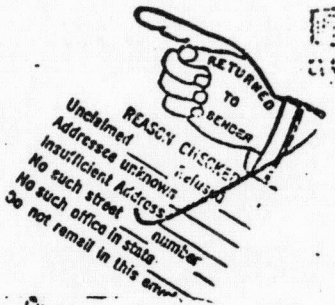
A. O. SMITH CORPORATION
PRODUCT SERVICE DIVISION

D. V. HALL, BRANCH MANAGER

DVH/F

PRODUCT SERVICE DIVISION
7250 SO. CICERO AVENUE • CHICAGO, ILLINOIS 60629

A.O. Smith
CORPORATION



137

EXHIBIT

A.O. Smith CORPORATION

WATER HEATER WARRANTY REPLACEMENT REPORT

DO NOT USE THIS FORM FOR PARTS REPLACEMENT

PLEASE MAIL THIS COPY (NO. 2) TO YOUR PRODUCT SERVICE BRANCH AND RETAIN HEATER UNTIL RECEIPT OF OUR INSTRUCTIONS WITHIN NEXT FEW DAYS

0022595

DISTRIBUTOR: STATEN ISLAND SUPPLY CO. INC.
1390 RICHMOND TERRACE
STATEN ISLAND, N. Y. 10310

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	AOS ACCT. NO. 10-15	CUST. REFERENCE NO. 16-25
S	13	2	[illegible]	482000	0022595

ADDRESS, CITY, STATE, ZIP CODE
TEL GIBRALTER 2-1106

5/66

DEFECTIVE HEATER DATA

27-31 MODEL	GALS. 32-35	ELEM. 36 (S)	A7 37 (7)	OAKSPL 38 (B)	CLNOUT 39 (C)	TYPE 40	UNR. 41 (U,N,D)	COM. 42 (C)	MFG. 43 (M)
PGD 50									

SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58	INSTALL. DATE 59-60	61-62	FAILURE DATE 63-64	65-66	MOS. 67-69	DIST. 70-72	CODE 73	DOL. 74-80
75066	2	00	20	7	8	6	66	6	8	175	106	

REPL. HTR. DATA

1	2-25	AUTH. 26 (A)	27-31 MOD. - GAL. 32-35	EXPIRES 36-37	YEARS	SERIES	YR.	LN.	MO.	SERIAL 53-58
T	DUP.		PGD 50	780	E	75	23	27	5	

INSTALL. DATE 59-60 61-62 | 63-80 TITLE

8/76-10

MR. QUIRE,

	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
1 U						LA		

	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
1 U						HA		

1	2-9	10-40 END USERS NAME	41-59 ADDRESS
V	DUP.	Quire	99 South Road

60-73 CITY	STATE 74-75	ZIP CODE 76-80	DESCRIPTION OF FAILURE
S I NY			Leks

DEALER NAME, ADDRESS, CITY AND STATE

REMARKS

DATE	SIGNATURE	SEND MORE FORMS	ENVELOPES
6-14-76	[signature]	☐ ~~PGD-250TD~~	☐

MODEL & RATING PLATE
PSD-250TD-771 MAIL THIS COPY TO YOUR PRODUCT SERVICE BRANCH
RECEIVED DATE.....

PRODUCT SERVICE DIVISION · 825 LEHIGH AVENUE · UNION, NEW JERSEY 07083 · 201 686-9000 · TELEX 13-8771

A. O. Smith CORPORATION

AUGUS. 18, 1975

MR. A. GOLDSTEEN
189 BLACKSMITH AVE.
STATEN ISLAND, NY

DEAR MR. GOLDSTEEN,

WE'RE SORRY TO LEARN THAT YOUR A. O. SMITH WATER HEATER HAD TO BE REPLACED. WE SINCERELY REGRET THE DIFFICULTIES THIS MUST HAVE CAUSED AND WE HOPE THAT THE NEW UNIT, SUPPLIED AT NO CHARGE UNDER THE TERMS OF OUR GUARANTEE, IS FUNCTIONING TO YOUR COMPLETE SATISFACTION. CHARGES FOR INSTALLATION AND DELIVERY OR FOR A MORE EXPENSIVE REPLACEMENT ARE EXCLUDED FROM THE GUARANTEE.

YOUR NEW WATER HEATER DESCRIBED BELOW IS GUARANTEED FOR THE REMAINDER OF THE TERM COVERING YOUR ORIGINAL UNIT.

MODEL PGDL 40
SERIAL NO. 780 75 E11842
ORIGINAL GUARANTEE - TEN YEARS
EXPIRATION DATE - APRIL 1, 1977

WE'VE REGISTERED YOUR NEW WATER HEATER IN OUR GUARANTEE EXTENSION RECORDS IN CASE ANY QUESTIONS CONCERNING IT SHOULD ARISE IN THE FUTURE. IF NECESSARY PLEASE REFER TO OUR FILE NUMBER 29113.

VERY TRULY YOURS,

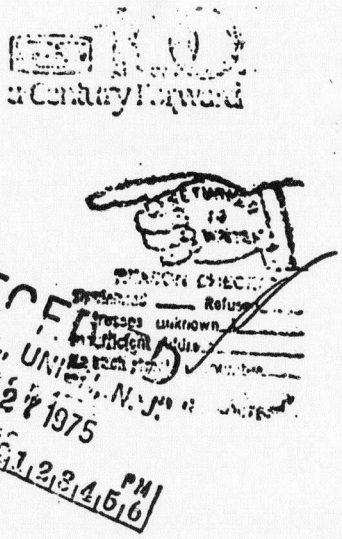
A. O. SMITH CORPORATION
PRODUCT SERVICE DIVISION

D. V. HALL, BRANCH MANAGER

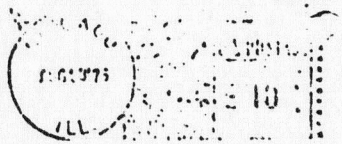
DVH/F

PRODUCT SERVICE DIVISION
7250 SO. CICERO AVENUE • CHICAGO, ILLINOIS 60629

not 206



a Century Forward



140

EXHIBIT

EXHIBIT

A.O. Smith CORPORATION

WATER HEATER WARRANTY REPLACEMENT REPORT

DO NOT USE THIS FORM FOR PARTS REPLACEMENT

PLEASE MAIL THIS COPY (NO. 2) TO YOUR PRODUCT SERVICE BRANCH AND RETAIN HEATER UNTIL RECEIPT OF OUR INSTRUCTIONS WITHIN NEXT FEW DAYS

0052044

DISTRIBUTOR OR UTILITY NAME	1	SEQ. 2-3	BR 4	CREDIT NO. 5-8	AOS ACCT. NO. 10-15	CUST. REFERENCE NO. 16-25
Sears Dec.	S	2	2	00911	472000	0052044

ADDRESS, CITY, STATE, ZIP CODE: 1390 Richmond Terrace — 12/66

DEFECTIVE HEATER DATA

27-31 MODEL	GALS. 32-35	ELEM. 36 (S)	A7 37 (7)	BAKSPL 38 (B)	CLNOUT 39 (C)	TYPE 40	UNR. 41 (U,N,D)	COM. 42 (C)	MIL 43 (M)
PGDL 40									

SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58	INSTALL. DATE 59-60	61-62	FAILURE DATE 63-64	65-66	MOS. 67-69	DIST. 70-72	CODE 73	DOL. 74-80
75067	1	D	07	542	4	9	67	7	75	73	99	

REPL. HTR. DATA

1	2-25	AUTH. 26 (A)	27-31 MOD. - GAL. 32-35	EXPIRES 36-37	38-39	YEARS 40-41	SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58
T	DUP.		PGDL 40	10	0	E	75	11	5	4	2

INSTALL. DATE 58-60 / 61-62 — 63-80 TITLE: mr. GOLDSTEEN — 4/77-10

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U						LA		

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U						HA		

1	2-9	10-40 END USER'S NAME	41-59 ADDRESS
V	DUP.	A Goldstein	189 Hackensack Ave

60-73 CITY	STATE 74-75	ZIP CODE 76-80	DESCRIPTION OF FAILURE
Dry			Leaks

DEALER NAME, ADDRESS, CITY AND STATE

REMARKS

DATE	SIGNATURE	SEND MORE FORMS	ENVELOPES
7 25 78	Paul H. Glassman	PSD-2501D ☑	☐

PSD-2501D MODEL & RETAIN THIS COPY TO YOUR PRODUCT SERVICE BRANCH

RECEIVED DATE.. 7-28

AFFIDAVIT OF ROBERT SCHWIMER IN
OPPOSITION TO ORDER TO SHOW CAUSE
AND EXHIBITS 1-2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

STATEN ISLAND SUPPLY COMPANY, INC., 75 CIV. 461

Plaintiff, T.C.P.

-against-

A. O. SMITH CORPORATION, EQUIPMENT DISTRIBUTORS CORP. and BROOKLYN UNION GAS COMPANY, AFFIDAVIT

Defendants.

----------X

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

ROBERT SCHWIMER being duly sworn, deposes and says:

I am the Vice President of the plaintiff corporation and make this affidavit in opposition to A. O. SMITH CORPORATION's ("SMITH") application to dissolve the preliminary injunction. A copy of the Court's prior decision entered May 1, 1975, is annexed as Exhibit 1.

Mr. RESNIKOFF, attorney for SMITH has very little knowledge of the dealings and relationship plaintiff has had with the employees of A. O. SMITH since the court granted the injunction. All of the relationships that have existed have been with SMITH employees, PAUL TOTH, Regional Sales Manager, BERNARD GILL, District Sales Manager, D. V. HALL, Manager - Eastern Branch, Product Service Division, and G. I. HURST, Credit Manager.

For Mr. RESNIKOFF to infer from his knowledge of the facts that I have been petulant and insulting to SMITH employees is erroneous and not supported by the facts. After the preliminary injunction was granted SISCO attempted to sell KEE Heaters into the Brooklyn and Staten Island areas. I was consistently told by the plumbing supply houses that the prices I was quoting were not competitive to those offered by EQUIPMENT DISTRIBUTORS. On several occasions I discussed the situation with Mr. Gill, asking him for the prices quoted to Hutter. I acknowledge that I did press Mr. GILL for an answer on the prices charged to EQUIPMENT DISTRIBUTORS as I believed the court's order required SMITH to offer plaintiff the same conditions offered any other distributor. Finally after almost two months, Mr. GILL called and said I would have a 5% discount on the KEE Heaters line provided such sales were in lots of twelve or more to sub-distributors. At this point I was able to quote prices competitive to EQUIPMENT DISTRIBUTORS, and received orders.

In late July, about one month after I orally received this new price information from Mr. GILL, Mr. GILL called and said SMITH was going to discontinue the 5% discount after August 15th and that I should get invoices to SMITH if I wanted to be able to sell with the 5% price discount. I and other

persons on the staff thereupon made concerted efforts to sell the KEE Heaters, which were now saleable on competitive terms, and in fact sold 519 KGA units of the value of $52,253.00 and 153 KEE units of the value of $11,316.25 of a total sales value of $63,569.25 after being told by Mr. GILL to turn in the invoices for such sales. Mr. GILL had stated only that the invoices had to be filed by August 15, 1975. At no time was any policy set forth in writing to plaintiff. At no time prior to August 15, 1975 did Mr. GILL state that delivery of the discontinued heaters had to be for immediate delivery. These discount sales amounted to almost 22% of my total 1974 SMITH volume of hot water heater sales and were as follows:

Purchaser	KGA Units	Dollar Value	KGD Units	Dollar Value
North Shore	67	$ 6,488.55	20	$ 1,476.00
Hendel	30	2,443.50		
Ideal	18	1,466.10		
Davis & Warshaw	12	977.40		
D.J.	18	2,129.20	8	590.40
Flushing	20	1,869.20	8	590.40
Bayside	20	1,869.20	8	590.40
Westbrook	21	2,166.10	12	885.60
Windsor	14	1,380.50	4	295.20
Victor	18	1,466.10		
Davis & Warshaw	18	1,466.10		
Dave's	12	977.40		
J. Chimerine	37	4,045.05	10	738.00
Bruce	17	1,921.75	10	738.00
Bruce	37	4,045.05	15	1,124.75
Brooklyn	46	5,329.10	12	885.60
Blake	20	1,922.20	6	449.90
Amster	12	1,117.90	4	295.20
Worth	24	2,866.10	8	590.40
Hendel	22	2,463.00	12	885.60
Flushing	14	1,380.50	4	295.20
Brooklyn	22	2,463.00	12	885.60
	519	$ 52,253.00	153	$ 11,316.25

Pursuant to Mr. GILL's statements, I sent SMITH the invoices for the purchases by letter dated August 6, 1975, annexed as Exhibit 2. Mr. TOTH advised that the special discount was being discontinued August 15, 1975. Thereafter on August 15, Mr. GILL called and stated that the KEE Heater sales had to be shipped by August 15th and not merely invoices submitted. (See Exhibit C(1) to Resnikoff Affidavit) While I do not know why the policy of SMITH to discontinue this 5% discount was put into effect - which policy apparently has been in existence for many years, so far as Equipment Distributors has been concerned - I do know that plaintiff lost a substantial profit, estimated to be 10% or $6,356.92. The means SMITH utilized in communicating its policy are indeed confusing.

The foregoing explanation of sales of $63,569.25 which were canceled, forms the background to my letters annexed to the plaintiff's moving papers marked Exhibit C-2, letter of August 6th from A. O. SMITH to plaintiff, plaintiff's reply of August 13th, which is not annexed to the moving affidavit, but annexed hereto as Exhibit 2 and Exhibit C-1, being a letter from PAUL TOTH, dated August 21st, replying to plaintiff's letter of August 13th.

I cannot assert with any knowledge what was done maliciously by SMITH to plaintiff, but this loss of $63,569.25 of sales made in a one month period and gained at great effort on plaintiff's part was extremely serious. I do not question Smith's right to change its policies, I do question the manner of the change and the means of incomplete communication utilized.

Mr. TOTH's letter on August 21st, (Exhibit C-1, Resnikoff Affidavit) specifically states that Mr. GILL called me on August 15th and for the first time stated that the discount applied only to the KEE units for immediate delivery. This Court is well aware that in the New York area EQUIPMENT DISTRIBUTORS had the Big Apple all to itself and apparently by reason of plaintiff's inability to quote competitive prices on the KEE line of heaters this pricing discount was in existence long before SMITH's attempt to terminate our distributorship and was a price differential given to EQUIPMENT DISTRIBUTORS to benefit EQUIPMENT DISTRIBUTORS at the expense of every other distributor. At no time did I ever see or read of any written SMITH policy with respect to this 5% discount or else plaintiff's pricing could and would have been competitive to EQUIPMENT DISTRIBUTORS on this line of heaters.

I gained the 5% discount price only after two months of persistence, only to lose the discount, $63,569.25 of sales and substantial profit after Mr. TOTH's new oral policy on the subject.

I respectfully offer my apologies for the use of certain words in describing Messrs. TOTH and GILL. I did not, as was threatened, communicate any material to SMITH distributors and sub-distributors. The Court will recognize that the frustration, embarrassment and loss of sales that these two gentlemen have caused me both prior to and since the granting of the preliminary injunction; the loss of sales of the KEE Heaters was the basis of my frustration. I am aware that I should not reflect my frustrations on losing sales notwithstanding Messrs. GILL and TOTH's continuing campaign to destroy plaintiff's business. Such expression will not occur again.

Within the two weeks, Mr. GILL advised me that I am not and have not been on A. O. SMITH's mailing list for some substantial period of time, of which fact I was not previously aware.

I advised my attorney of SISCO's being delated from the SMITH mailing list, Mr. PULVERMACHER wrote a letter which he refers to in his separate affidavit.

With respect to Mr. RESNICK's statements concerning the falsified reports submitted by plaintiff since the period of the preliminary injunction, I must acknowledge the errors of my office procedures. This matter relates to heaters that were furnished as replacements for leaking heaters under warranty.

Commencing in late 1972, at about the time I was receiving the continuous threats not to sell Brooklyn Union Gas or sell in the Big Apple, SISCO adopted an office procedure to hide the fact that sales of the original heaters by SMITH had been made into Brooklyn and Queens. The sales into the Big Apple were sales to other distributors and plumbers, never to an end user. Sisco in fact never dealt with the end user. The distributor or plumber would advise us/ of the defect. SISCO would verify the date of sale and furnish the replacement. No reports of original sales were ever required by SMITH, however, when heaters failed in the warranty period ("leakers") and required replacement, the sub-distributor or plumber would contact plaintiff for the warranty replacement heater. The SMITH procedure was to give SISCO credit for having furnished a replacement on filing form 2501D-774 and verification that the original heater was in warranty. Records of the sale and serial number were maintained with plaintiff. Plaintiff would, upon verification, furnish the replacement and would request a credit from SMITH. By filing the Form 2021D-774 the SISCO staff recognized that if the replacement report reflected an original heater sold into Brooklyn-Queens area, SMITH would have confirmation that my denials to Messrs. TOTH and GILL that no sales were being made into Brooklyn and

Queens were untrue. During this period of time to show the replacement of a leaker into the Brooklyn-Queens area would have established that the original sale had been made into such prohibited areas. Therefore, a bookkeeping system was developed to create a coverup whereby a false name and address was used on the Replacement Report sent to SMITH on Form 2501.

Prior to the actual termination and the granting of the preliminary injunction, from time to time plaintiff would receive written notices from SMITH that a letter to an end user, whose name had been supplied by SISCO as having received a replacement, was not delivered. Plaintiff never commented on such notice and SMITH never pressed the subject.

After the preliminary injunction was granted, I must confess I forgot about the subterfuge I had been forced to engage in previously and neglected to tell the record keeper that this subterfuge was no longer needed. My first knowledge of this situation occurred when I received a letter from Mr. HALL, Manager, Eastern Branch Products Service Division, annexed to SMITH's papers as Exhibit D, dated August 14th. I then immediately realized that the coverup had continued after the preliminary injunction. I promptly acknowledged the erroneous manner in which the reports had been filed in my letter to Mr. HALL dated August 27th, annexed as Exhibit B to

the moving papers. To the best of my knowledge the number of false reports filed after May 1, 1975 may constitute twenty or twenty-five. I have advised Mr. HALL that it is virtually impossible to give him the name of the end user in many cases as SISCO sells to sub-distributors or plumbers. However, I have supplied Mr. HALL with the name of the plumbing supply house which purchased the heaters that subsequently became a leaker covered by warranty. The Court will recognize by reading my letter of August 27th, my candor, wherein I say, "We had to deny the sale of units off of Staten Island and therefore all claims sent in were for Staten Island addresses although non-existent".

Plaintiff did not take a name out of the telephone book with an address, but actually made up the name and address and this practice had been continually conducted since late 1972 and was not discontinued after the injunction through oversight, but has since been discontinued.

I most respectfully regret having engaged in this artful subterfuge to prevent SMITH from learning of the out-of-area sales but I was fearful of the threatened termination of the distributorship.

Since the entry of the preliminary injunction there has been a marked decrease in Mr. GILL's weekly visits which now only occur after repeated calls.

Mr. GILL is the A. O. SMITH salesman in charge of plaintiff's account. He is plaintiff's means of receiving information from SMITH which includes special offers, discounts, price changes and other technical information. Mr. GILL came into the office during the latter part of August and for the first time advised there was to be a price increase. When I expressed surprise he stated for the first time that plaintiff's name had been removed from SMITH's mailing list. While I used regretable language in referring to Messrs. TOTH and GILL in my letters, the Court will recognize that a business man must know the cost of acquiring the product in order to know at what price the product should be offered for resale. TOTH and GILL have consciously and deliberately withheld this information.

Mr. GILL has repeatedly stated in reply to questions about pricing and special offers, "See your lawyer", and not furnished information. As SMITH rarely sets its policies forth in writing, Mr. GILL's information is vital - but now he has refused to furnish me with information available to other distributors.

Mr. RESNIKOFF states that plaintiff has "continued to refuse to pay his service costs on sales outside of Staten Island, despite the provisions in the Court's May 1, 1975 order requiring it". By innuendo Mr. Resnikoff would have this

Court believe that bills have been rendered for such services. In truth no bills have been rendered for service calls since May 1, 1975. The only comment made by SMITH with respect to such non-payment of service calls is contained in a letter from Mr. G. I. HURST, dated September 4, 1975, annexed as Exhibit A to the PAUL TOTH Affidavit, in which Mr. HURST seeks reimbursement for service bills in January 1975 of $180.00 and in April of $270.00. Since April no bill for service work has been received.

I do not believe that the Court's Order of May 1st required me to pay these two service bills which involved services prior to litigation. However, if such was the Court's intention such bills will be paid. All bills for service work performed after May 1st will be paid in the normal course but to date none have been received.

In the letter from Mr. HURST of September 4, 1975, there is reference to a series of orders in March 1975 which again on reflection suggests that SMITH had taken plaintiff off the mailing list as early as March and never restored plaintiff to the mailing list after the preliminary injunction. This involves the payment of $279.00 relative to orders placed in March, after the temporary restraining order had been entered, which orders SMITH now says should have been filed by March 15, although at the time it was my understanding from Mr. GILL that

such orders need to have been filed during March and therefore the bills should be at an increased price. Again if SMITH were to have set forth its policies in writing there would be no basis for misunderstanding.

As a closing statement Mr. HURST sets forth a veiled threat that they will not continue to ship unless these few dollars totaling $830.00 in all, are not paid by September 15th.

Again the Court will see the failure to advise me of pricing, the times of filing orders and the nature of orders and the general failure of Mr. GILL to service plaintiff as the duly appointed salesman has created this problem and has led to frustration. I did not, have not and will not contact any other distributors as stated in my letter annexed to SMITH's papers as Exhibit A in the first paragraph.

Without the usual service of Mr. Gill and without receiving the mail from SMITH, plaintiff has been seriously damaged in its selling efforts and it is only after price changes or changes in terms of sale that I know a new policy exists. Thus Mr. Hurst's letter of September 4th was the first time I became aware that the orders he refers to were ineligible for the pricing unless such orders were received before March 14th. This is but another example after five months of the manner in which SMITH interprets its policies. When the invoice for March came in and was due

for payment, the sum of $279.00 was deducted based upon the established price as it had been communicated to me by Mr. Gill. Since I did not receive the mailing advising me that the orders had to be filed by March 14th and in accordance with long established practice between the parties, the invoice from SMITH was adjusted to the correct amount and paid. Now four and a half months after the deduction was taken, for the first time and obviously in continuation of the concerted effort of SMITH to terminate the distributorship or otherwise embarrass plaintiff, the fact that pricing on such orders applied only to orders received before March 14, 1975 is made known.

WHEREFORE, deponent respectfully requests that this Court dismiss the motion.

Sworn to before me this
18th day of September, 1975

Robert Schwimer

LOUIS C. PULVERMACHER
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-3173615
Qualified in New York County
Commission Expires March 30, 1977

EXHIBIT 1

OPINION AND ORDER OF PLATT, D.J.
DATED MAY 1, 1975

(2)

EXHIBIT 2.

CONSUMER PRODUCTS DIVISION • 826 LEHIGH AVENUE • UNION, NEW JERSEY 07083 • 201 686-9000

A.O. Smith CORPORATION

August 6, 1975

Mr. Robert Schwimer
Staten Island Supply
1390 Richmond Terrace
Staten Island, NY 10310

Dear Bob:

This is to notify you that as of August 15, 1975, we are discontinuing the special 5 percent discount price given to you on sales to subwholesalers of five year A. O. SMITH residential water heaters.

All final claims with supporting invoices should be sent to A. O. SMITH by September 15, 1975.

Very truly yours,

A. O. SMITH CORPORATION

Paul

Paul P. Toth
Regional Sales Manager
Consumer Products Division

PPT:pas

cc: B. L. Gill
E. C. Michaud

AFFIDAVIT OF LOUIS C. PULVERMACHER
IN OPPOSITION TO ORDER TO SHOW CAUSE
AND EXHIBITS 3-11

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

STATEN ISLAND SUPPLY COMPANY, INC., AFFIDAVIT IN OPPOSITION TO MOTION

Plaintiff,

-against-

A.O. SMITH CORPORATION, EQUIPMENT DISTRIBUTORS CORP. and BROOKLYN UNION GAS COMPANY,

Defendants.

----------X

STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)

LOUIS C. PULVERMACHER, being duly sworn deposes and says:

1. I am the attorney for the plaintiff and make this affidavit in opposition to defendant A. O. SMITH'S ("SMITH") motion to dissolve the preliminary injunction.

2. On Page "6" under "Status of the Action", in DON ALLEN RESNIKOFF'S affidavit in support of the motion, he states that SMITH seeks "to expedite the discovery proceedings to the extent plaintiff has permitted it", but that deponent has elected not to proceed "except for patently defective requests for documents ..."

3. SMITH'S counsel served plaintiff with notice to examine ROBERT SCHWIMER, which commenced May 16, 1975, over four days and concluded June 9, 1975. SMITH'S counsel served on May 8, 1975, a notice for the production of documents dated May 7, 1975, which notice is annexed hereto as Exhibit 3, which sought the production of papers on May 16, 1975. Notwithstanding the short notice, plaintiff produced approximately 20 cubic feet of records.

4. Just prior to the expiration of the thirty days within which to make objections, SMITH'S counsel, along with counsel for the other two defendants filed responses and objections to all the documents requested, except with respect to the production of distributors agreements with others.

5. A copy of plaintiff's production demand upon SMITH and the other two defendants is annexed as Exhibit "4", the response of SMITH is annexed as Exhibit "5"; the response of BROOKLYN UNION GAS CO. is annexed as Exhibit "6" and the response of EQUIPMENT DISTRIBUTORS is annexed as Exhibit "7".

6. During the summer, Mr. Resnikoff was engaged in a multi-defendant anti-trust case before Mr. Justice Pierce in the United States District Court, Southern District.

On September 2nd, I called Mr. Resnikoff to discuss his objections and failing any accommodation on his objections, said I would request a date when we could appear before Magistrate Catoggio to which he replied, "not this week and not next, I am too busy". I thereupon contacted Magistrate Catoggio and advised him of the situation and the Magistrate established a date of September 5th, at which time a conference, which did not result in the disposition of the problem of SMITH producing documents,was held. Such conference did result in a probable resolution of the problems existing with BROOKLYN UNION GAS CO. and a possible resolution with EQUIPMENT DISTRIBUTORS. In such conference Mr. Resnikoff submitted a lengthly letter, a copy of which is annexed as Exhibit "8", seeking to adjourn the conference to October 2nd on the grounds the conference was unnecessary. The next meeting before the Magistrate was already set and he could see no reason to do more. Mr. Resnikoff's position was: "Let time take its course"..

7. During the conference, Mr. Resnikoff voiced the complaint that I should proceed with other areas of discovery and I stated that this was a complex case; that I wanted to get a handle on the matter and understand the

documents before going into the interrogatories and depositions; that I did not suggest the manner in which he should conduct his case and I did not appreciate his comments on my procedure.

8. In Mr. Robert Schwimer's affidavit he refers to being advised on or about September 4th or 5th that he was told by Mr. Bernard Gill that Staten Island Supply Co. had been removed from the A.O. Smith mailing list. I immediately sent a letter to Mr. Resnikoff, a copy of which is annexed as Exhibit "9". As of this date, I have not had a reply to such letter. In such letter I stated "I should like to afford you a reasonable opportunity to correct this situation and expect to have a written reply from you by the close of business September 12, 1975", one week following the transmission of the letter. On September 16, 1975, I again reminded Mr. Resnikoff,by letter, of his failure to reply to my letter concerning the removal of plaintiff from the SMITH mailing list. A copy of said letter is annexed as Exhibit "10".

9. I must observe that rather than meeting the merits of this action, Mr. Resnikoff is seeking to create delays and obstacles and proceeding on technical problems that need not be brought to this Court's attention, but could well be resolved by the Magistrate.

10. In this connection Mr. Resnikoff stated before the Magistrate and had written prior to the hearing (See Exhibit "11" annexed) to the Magistrate that it was his desire that the disputes relative to plaintiff's demand for production of documents be resolved in the form of a motion, rather than before the Magistrate. At the conference with the Magistrate, I stated I felt such position was an unfair imposition upon this Court's valuable time and I repeat such thought.

WHEREFORE, deponent respectfully requests that this Court dismiss the motion.

Louis C. Pulvermacher

Sworn to before me this
18th day of September, 1975

Barbara C. Holley

BARBARA C. HOLLEY
NOTARY PUBLIC, State of New York
No. 31-1838740
Qualified in New York County
Commission Expires March 30, 1977

EXHIBIT 3

DEFENDANT A. O. SMITH CORPORATION'S REQUEST TO PLAINTIFF FOR PRODUCTION OF DOCUMENTS FILED MAY 16, 1975.

EXHIBIT 4

PLAINTIFF'S REQUEST FOR THE PRODUCTION
OF DOCUMENTS FILED JUNE 24, 1975.

EXHIBIT 5

DEFENDANT A. O. SMITH CORPORATION'S ANSWER TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS FILED JULY 24, 1975.

EXHIBIT 6

DEFENDANT BROOKLYN UNION GAS COMPANY'S
RESPONSE AND OBJECTIONS TO PLAINTIFF'S
PRODUCTION OF DOCUMENTS FILED JULY 21, 1975.

EXHIBIT 7

DEFENDANT EQUIPMENT DISTRIBUTORS CORPORATION'S
RESPONSE AND OBJECTIONS TO PLAINTIFF'S
PRODUCTION OF DOCUMENTS FILED AUGUST 19, 1975.

EXHIBIT 8

COPY

TURK, MARSH, KELLY & HOARE
666 FIFTH AVENUE
NEW YORK, N.Y. 10019

GILBERT FREI
CARTER T. LOUTHAN
ALEXANDER L. CACCIA
GEORGE B. SNELL
BUYLER C. HELD
JOHN ANTHONY SMITH
JOHN G. PALACHE, Jr.
PAUL F. NASH
G. PETER GROSS
DON ALLEN RESNIKOFF
RALPH E. LERNER

DAVID KELLY
L. RANDOLPH MASON
EDWARD E. WATTS, Jr.
HARRY A. LEIGH
EDWARD M. CAMERON, Jr.
COUNSEL

CABLE ADDRESS
"MELOPOEIA"
TEL. 765-3900
"AREA CODE 212"

September 5, 1975
B2757
By Hand

Magistrate Vincent A. Catoggio
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Dear Magistrate Catoggio:

Apparently your notice of today's conference dated September 2, 1975 crossed in the mail my letter to Mr. Pulvermacher and yourself of the same date.

It is not clear to me what perceived emergency moved Mr. Pulvermacher to request a hearing on such short notice. However, I see it as my obligation to make the conference productive, so that I am providing this necessarily hasty outline of pending discovery matters to facilitate discussion.

Discovery by plaintiff of defendants

You will recall that at the pre-trial conference of this past May, a summer schedule of depositions to be conducted by plaintiff was set (there being at that time no mention of any document requests by plaintiff). No deposition has ever been noticed by plaintiff. Instead, a patently overbroad and

EXHIBIT 8

COPY

improper request for production of documents dated June 19, 1975 was served by plaintiff, and properly responded to by defendants in July without adjournment. (Incidentally, the documents Smith provided to plaintiff for copying in July have not yet been returned to me.) No other discovery has been sought by plaintiff.

Mr. Pulvermacher may take the position that defendants' objections to a patently overbroad and improper request for documents explain why depositions by plaintiff have not proceeded. But he is a most experienced litigator, and knows better.

Assuming the preliminary injunction is not dissolved before trial, it is essential to Smith that plaintiff be required to expedite its discovery of defendants, as the Court's shotgun marriage of Smith and plaintiff by preliminary injunction is not happy, and ought not be prolonged. (I expect you already have in your hands the Smith motion papers seeking immediate dissolution based on plaintiff's villification of Smith employees and other business derelictions.)

Smith's discovery of plaintiff

Interrogatories

You will recall that at our May conference it was

EXHIBIT 8

COPY

agreed that plaintiff would promptly answer Smith's interrogatories to plaintiff served May 15, 1975. Plaintiff has never objected to the interrogatories, but also has never answered them. Because you have previously required plaintiff to answer interrogatories, and plaintiff has not complied, it seems that a formal Court order is necessary.

Questions left for separate response during deposition of plaintiff, and remaining unanswered are as follows:

(a) Identification of (1) plumber related sales and (2) consumer related sales reflected in plaintiff's invoices and exhibit S-2 for identification. (transcript p. 345)

(b) Explanation of documentary basis for testimony covering time of accountant's visits. (transcript p. 445)

(c) Questions concerning Smith ads published by Sisco. (transcript p. 445)

Depositions

Defendant Smith requires deposition of Ed Schwimmer, the first witness plaintiff presented at the preliminary injunction hearing. Deposition is required concerning the subject matter of Ed Schwimmer's direct testimony at the preliminary

EXHIBIT 8

COPY

injunction hearing, which testimony may be used at the jury trial. Ed Schwimmer was president of plaintiff, and signed the distributor contracts between Smith and plaintiff in effect before 1973. Performance under the contracts signed by Ed Schwimmer has clearly been put in issue in their litigation.

Documents

Although plaintiff has neither timely objected nor responded to Smith's Rule 34 request for documents served on plaintiff in aid of deposition, Smith has no application for your attention at this time. Rather, Smith's intention is to attempt to identify further specific documents through plaintiff's answers to interrogatories, deposition testimony, and other further discovery, and to endeavor to limit application to this Court to reasonably specified documents that plaintiff declines to produce.

Other discovery by Smith

Continued deposition of Robert Schwimmer is likely to be required, depending on plaintiff's answers to interrogatories and other discovery. The same is true concerning deposition of plaintiff's bookkeepers and accountants. Plaintiff's answers to interrogatories and other information produced on

EXHIBIT 8

COPY

discovery by plaintiff will very likely suggest other avenues of discovery. (Of course, under the local rules and generally accepted procedure discovery of the parties may proceed concurrently.)

Respectfully yours,

Don Allen Resnikoff

DAR:rzr

cc: Louis C. Pulvermacher, Esq.
Francis X. Brickfield, Esq.
Hugh Turk, Esq.

EXHIBIT 9

COPY

LOUIS C. PULVERMACHER, P.C.
ATTORNEY AT LAW
410 PARK AVENUE
NEW YORK, N.Y. 10022

212 PLAZA 8-8001

September 5, 1975

Don Allen Resnikoff, Esq.
Messrs. Turk, Marsh, Kelly & Hoare
666 Fifth Avenue
New York, N.Y.
10019

Staten Island Supply Co., Inc. v. A.O. Smith Corp., et al

Dear Mr. Resnikoff:

I am advised by my client that they have been removed from the mailing list of A.O. Smith and have not received the necessary information which is usually supplied to distributors. Apparently this has been going on for three months.

Prior to moving for contemptof the injunction, I should like to afford you a reasonable opportunity to correct this situation and expect to have a written reply from you by the close of business September 12, 1975.

Very truly yours,

LCP/rr

EXHIBIT 10

LOUIS C. PULVERMACHER, P.C.
ATTORNEY AT LAW
410 PARK AVENUE
NEW YORK, N.Y. 10022

212 PLAZA 8-8001

September 16, 1975

BY HAND

Don Allen Resnikoff, Esq.
Messrs. Turk, Marsh, Kelly & Hoare
666 Fifth Avenue
New York, N.Y. 10019

Re: Staten Island Supply Co., Inc.
v. A. O. Smith, et al

Dear Mr. Resnikoff:

I have your letter of September 8, 1975 attached to the back of Messrs. Turk, Marsh, Kelly & Hoare as a document for filing. Your assumption that letters were communicated without my knowledge is correct.

Under the extreme pressure and circumstances which your client's employees have continued, I must consider my client's comments not unjustifiable, although I personally would not have described their unconscionable actions in the language employed by Mr. Schwimer.

Perhaps you will enlighten me with respect to the three cases you have cited in the third paragraph as I do not quite understand the meaning of your including such cases.

I am familiar with a portion of the transcript which you have quoted, but I would appreciate and understand that service requirements on Sisco do not exist in Staten Island and do exist in other areas, other than Staten Island. However, understanding this, I do not think Mr. D. V. Hall's letter of August 27th, reflects Mr. Schwimer's lack of knowledge of Smith's policies on warranty service. As Mr. Schwimer himself has answered, Sisco was forced to adopt a cover-up policy to protect against Messrs. Toth and Gill's expression that he should not sell into the Brooklyn/Queens area (the so-called Big Apple).

Again I ask you if you would clarify what you are referring to with respect to Smith's policy concerning warranty service. As you are aware, my client sells to no or relatively few individual or end users off the Staten Island area. The sales

are to plumbers, supply houses or sub-distributors. Under the circumstances would you, for my edification, enlighten me on Smith's policy concerning warranty service as to sales made to plumbing supply houses and sub-distributors where my client does not know the name of the end users.

May I also point out to you that you have not replied to my letter of September 5, 1975, which I am enclosing for your ready reference.

I must also point out to you that your client has never responded to my client's request for permission to advertise water heaters without use of the A. O. Smith name and I feel this is also a breach of the court's direction.

Sincerely,

LCP/gw
Encl.

EXHIBIT 11

TURK, MARSH, KELLY & HOARE
666 FIFTH AVENUE
NEW YORK, N.Y. 10019

GILBERT FREI
CARTER T. LOUTHAN
ALEXANDER L. CACCIA
GEORGE D. SNELL
HUYLER C. REID
JOHN ANTHONY SMITH
JOHN O. PALACHE, Jr.
PAUL F. NASH
G. PETER GROSS
DON ALLEN RESNIKOFF
RALPH E. LERNER

DAVID KELLY
L. RANDOLPH MASON
EDWARD E. WATTS, Jr.
HARRY A. LEIGH
EDWARD N. CAMERON, Jr.
COUNSEL

CABLE ADDRESS
"HELOPORIA"
TEL. 765-2000
"AREA CODE 212"

September 2, 1975
B2757

Re: Staten Island Supply Co., Inc. v.
A. O. Smith Corporation, et al.

Louis C. Pulvermacher, Esq.
410 Park Avenue
New York, New York 10022

Dear Mr. Pulvermacher:

With reference to our conversation of this morning, in which you stated Magistrate Catoggio's direction that a date be set for a conference later this week or early next week concerning your client's request for a production of documents, I would like to make my position clear and avoid misunderstanding.

Obviously, I will agree to any conference that the Magistrate feels will be useful in moving the case along.

However, it is my opinion that confusion and waste of time will be avoided if any objections you have to defendants' production of documents is embodied in a motion which might well be referred to Magistrate Catoggio. Use of papers in the usual manner would pinpoint fact and law issues, and, I think, facilitate considered response by defendants.

Moreover, plaintiff is delinquent on a number of discovery matters, which I think should be brought to the attention of the Court and the Magistrate in writing before oral discussion is had. I will endeavor to prepare a letter to you and the Magistrate outlining these matters as they affect Smith, and presenting necessary motions by Smith. I will do my best to complete that project expeditiously.

EXHIBIT 11

In short, I will appear at a conference before the Magistrate at his convenience, but suggest, subject to the Magistrate's judgment, that the conference wait preparation of my letter and necessary motions on matters requiring formal order, such as your client's continued failure to answer interrogatories or pursue discovery.

Incidentally, I do think we will meet in court or before the Magistrate very soon concerning your client's letters of August 27, 1975 to my client.

Very truly yours,

Don Allen Resnikoff

DAR:rrr

cc: Hon. Vincent A. Catoggio
Francis X. Brickfield, Esq.
Hugh Turk, Esq.

REPLY AFFIDAVIT OF DON ALLEN RESNIKOFF
IN SUPPORT OF ORDER TO SHOW CAUSE
AND EXHIBIT

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- X

STATEN ISLAND SUPPLY COMPANY, INC., :

Plaintiff, :

- against - :

A. O. SMITH CORPORATION, EQUIPMENT DISTRIBUTORS CORPORATION and BROOKLYN UNION GAS COMPANY, :

Defendants. :

- X

75 Civ. 461

REPLY AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, DON ALLEN RESNIKOFF, being duly sworn, depose and say:

1. I am a member of the firm of Turk, Marsh, Kelly & Hoare, attorneys for defendant A. O. Smith Corporation ("Smith"), and I make this affidavit in support of Smith's order to show cause returnable September 9, 1975, and, more specifically, in reply to Louis C. Pulvermacher's affidavit sworn to September 18, 1975.

2. Apparently for tactical reasons, Mr. Pulvermacher's affidavit emphasizes the diversionary and incorrect point that Smith's counsel is delaying the action. Mr. Pulvermacher presses this argument notwitnstanding that (1) Smith timely

answered plaintiff's sole discovery request, that being a request for documents, while (2) plaintiff is months overdue in supplying any response to Smith's interrogatories.

A sufficient outline of Smith's position on discovery (including plaintiff's failure to pursue discovery) was set out in my letter of September 5, 1975 to Magistrate Catiggio, which is attached for convenience in reference. (As suggested in that letter, I was, in fact, surprised that Mr. Pulvermacher required a hearing on two day's notice in September on a document request of plaintiff to which Smith replied in July.)

3. Mr. Pulvermacher's question on mailing is met in the affidavit of Paul Toth dated September 23, 1975.

S/
Don Allen Resnikoff

Sworn to before me this
23 day of September, 1975.

S/
Notary Public

JOSEPH F. GIASI, JR.
Notary Public State of New York
No. 24-6505065
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 19[illegible]

EXHIBIT
COPY

TURK, MARSH, KELLY & HOARE
666 FIFTH AVENUE
NEW YORK, N.Y. 10019

GILBERT FREI
CARTER T. LOUTHAN
ALEXANDER L. CACCIA
GEORGE B. SNELL
HUYLER C. HELD
JOHN ANTHONY SMITH
JOHN O. PALACHE, Jr.
PAUL F. NASH
O. PETER GROSS
DON ALLEN RESNIKOFF
RALPH E. LERNER

DAVID KELLY
L. RANDOLPH MASON
EDWARD E. WATTS, Jr.
HARRY A. LEIGH
EDWARD M. CAMERON, Jr.
COUNSEL

CABLE ADDRESS
"MELOPOEIA"
TEL. 765-3600
"AREA CODE 212"

September 5, 1975
B2757
By Hand

Magistrate Vincent A. Catoggio
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Dear Magistrate Catoggio:

Apparently your notice of today's conference dated September 2, 1975 crossed in the mail my letter to Mr. Pulvermacher and yourself of the same date.

It is not clear to me what perceived emergency moved Mr. Pulvermacher to request a hearing on such short notice. However, I see it as my obligation to make the conference productive, so that I am providing this necessarily hasty outline of pending discovery matters to facilitate discussion.

Discovery by plaintiff of defendants

You will recall that at the pre-trial conference of this past May, a summer schedule of depositions to be conducted by plaintiff was set (there being at that time no mention of any document requests by plaintiff). No deposition has ever been noticed by plaintiff. Instead, a patently overbroad and

EXHIBIT

COPY

improper request for production of documents dated June 19, 1975 was served by plaintiff, and properly responded to by defendants in July without adjournment. (Incidentally, the documents Smith provided to plaintiff for copying in July have not yet been returned to me.) No other discovery has been sought by plaintiff.

Mr. Pulvermacher may take the position that defendants' objections to a patently overbroad and improper request for documents explain why depositions by plaintiff have not proceeded. But he is a most experienced litigator, and knows better.

Assuming the preliminary injunction is not dissolved before trial, it is essential to Smith that plaintiff be required to expedite its discovery of defendants, as the Court's shotgun marriage of Smith and plaintiff by preliminary injunction is not happy, and ought not be prolonged. (I expect you already have in your hands the Smith motion papers seeking immediate dissolution based on plaintiff's villification of Smith employees and other business derelictions.)

Smith's discovery of plaintiff

Interrogatories

You will recall that at our May conference it was

EXHIBIT

COPY

agreed that plaintiff would promptly answer Smith's interrogatories to plaintiff served May 15, 1975. Plaintiff has never objected to the interrogatories, but also has never answered them. Because you have previously required plaintiff to answer interrogatories, and plaintiff has not complied, it seems that a formal Court order is necessary.

Questions left for separate response during deposition of plaintiff, and remaining unanswered are as follows:

(a) Identification of (1) plumber related sales and (2) consumer related sales reflected in plaintiff's invoices and exhibit 9-2 for identification. (transcript p. 345)

(b) Explanation of documentary basis for testimony covering time of accountant's visits. (transcript p. 445)

(c) Questions concerning Smith ads published by Sisco. (transcript p. 445)

Depositions

Defendant Smith requires deposition of Ed Schwimmer, the first witness plaintiff presented at the preliminary injunction hearing. Deposition is required concerning the subject matter of Ed Schwimmer's direct testimony at the preliminary

EXHIBIT
COPY

injunction hearing, which testimony may be used at the jury trial. Ed Schwimmer was president of plaintiff, and signed the distributor contracts between Smith and plaintiff in effect before 1973. Performance under the contracts signed by Ed Schwimmer has clearly been put in issue in their litigation.

Documents

Although plaintiff has neither timely objected nor responded to Smith's Rule 34 request for documents served on plaintiff in aid of deposition, Smith has no application for your attention at this time. Rather, Smith's intention is to attempt to identify further specific documents through plaintiff's answers to interrogatories, deposition testimony, and other further discovery, and to endeavor to limit application to this Court to reasonably specified documents that plaintiff declines to produce.

Other discovery by Smith

Continued deposition of Robert Schwimmer is likely to be required, depending on plaintiff's answers to interrogatories and other discovery. The same is true concerning deposition of plaintiff's bookkeepers and accountants. Plaintiff's answers to interrogatories and other information produced on

EXHIBIT

COPY

discovery by plaintiff will very likely suggest other avenues of discovery. (Of course, under the local rules and generally accepted procedure discovery of the parties may proceed concurrently.)

Respectfully yours,

Don Allen Resnikoff

DAR:rzr

cc: Louis C. Pulvermacher, Esq.
Francis X. Brickfield, Esq.
Hugh Turk, Esq.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- -x

STATEN ISLAND SUPPLY COMPANY, INC., :

75 Civ. 461

Plaintiff, :

REPLY AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE

-against- :

A. O. SMITH CORPORATION, EQUIPMENT DISTRIBUTORS CORP., and BROOKLYN UNION GAS COMPANY, :

Defendants. :

- -x

STATE OF NEW JERSEY)
: ss.:
COUNTY OF UNION)

I, PAUL TOTH, being duly sworn, depose and say:

I am Regional Manager of defendant A. O. Smith Corporation ("Smith"), familiar with dealings between plaintiff and Smith, and make this affidavit in support of the order to show cause issued by the Court on behalf of Smith and returnable September 19, 1975, and in reply to the opposing affidavit of Robert Schwimer, sworn to September 18, 1975.

My reaction to personal villification.

Robert Schwimer's virulent letters to Dan Hall and me, copies of which are attached to Don Allen Resnikoff's affidavit of September 4, 1975, are typical of his behavior and not unusual. As I have often reported to Smith's outside counsel in the past, Robert Schwimer regularly launches into tirades of

villification directed against me and Bernard Gill during conversations with various other Smith people located both in New Jersey and Illinois. Robert Schwimer's tirades are upsetting to the Smith personnel subjected to them, and to me.

As I testified at the preliminary injunction hearing, I find Robert Schwimer's willingness to lie disturbing, so that I find it difficult to be reassured by his promise not to publicly villify me in the future.

I feel that Robert Schwimer has taken the Court's preliminary injunction order as a license to abuse me personally, as well as to flaunt Smith's business needs. I feel that fairness requires the Court to take steps to stop that personal abuse and flaunting of Smith's interests.

<u>The 5% discount on KEE heaters.</u>

Robert Schwimer attempts in his affidavit to explain his publication of insults as being caused by deprivation of a 5% discount on certain Smith heaters.

It is hard for me to understand how any problem on a discount entitles plaintiff to villify me, Bernard Gill and Smith to the industry, as plaintiff admits doing.

The facts on the 5% discount are quite simple and not an appropriate basis for complaint by plaintiff. Plaintiff was afforded a 5% quantity discount on certain heaters sold to subwholesalers in lots of twelve.

Then, by letter of August 6, 1975 (Exhibit C(2) to the affidavit of Don Allen Resnikoff, sworn to September 4, 1975), I advised plaintiff as follows:

"Dear Bob:

"This is to notify you that as of August 15, 1975, we are discontinuing the special 5 percent discount price given to you on sales to subwholesalers of five year A. O. SMITH residential water heaters.

"All final claims with supporting invoices should be sent to A. O. SMITH by September 15, 1975."

Because Robert Schwimer chose to press the unusual argument that invoices for future deliveries and payment would meet the August 15 deadline, by letter of August 21, 1975 (Exhibit C(1) to the affidavit of Don Allen Resnikoff, sworn to September 4, 1975), I advised plaintiff:

"Dear Bob:

"I am replying to your letter of August 13, 1975, to me in which you requested that an enclosed number of invoices for sales of KEE water heaters to sub-wholesalers be honored under our special 5 percent discount price.

"It is apparent from your letter that these invoices are for future delivery and that the units as yet have not been purchased from A. O. SMITH. As stated in my letter of August 6, 1975, this special price terminated on August 15, 1975. Bernie Gill called you from my office on August 15, 1975, and explained that the 5 percent discount from A. O. SMITH on the subject invoices would only apply if you were to order for immediate shipment enough KEE water heaters to equal the number of units on the invoices. As of Monday, August 18, 1975, we had not received any orders from you for KEE water heaters marked for immediate shipment.

"It is not possible for us to give you special consideration which we could not give other distributors. Therefore, I have to deny your request on the enclosed invoices."

It seems to me that communications from Smith to plaintiff were clear and simple, and, as stated above, easily understood and not a reasonable source of confusion or upset to plaintiff.

In summary, where plaintiff took the 5% discount for units actually purchased and delivered, Smith agreed to it; Smith refused the discount only where plaintiff took a discount for units not yet purchased and paid for, but to be purchased and paid for in the future.

The mailing list.

Upon investigation, I have discovered that through inadvertence, plaintiff may not have received items mailed by Smith from Illinois for a period of time after the middle of March, 1975. However, the notification to plaintiff of higher April, 1975 prices and related requirements directed to distributors was by the correspondence of February 28, 1975, attached as Exhibit C(2) to my affidavit of September 10, 1975, and to the best of my knowledge was mailed to plaintiff. (There would, of course, be no purpose for Smith to deprive plaintiff of a notice of higher prices to be paid Smith by plaintiff.) Incidentally, plaintiff claims March pricing for invoices on which plaintiff requested May delivery, suggesting that plaintiff did not intend to bring the orders under the lower March pricing.

The falsified warranty statements.

I find puzzling the explanation in Robert Schwimer's affidavit, sworn to September 18, 1975, that false warranty statements continued into the preliminary injunction period because Robert Schwimer neglected to abandon a subterfuge. I am puzzled because the nature of the subterfuge is very peculiar. The "2501" warranty forms submitted by plaintiff are applications by a distributor for credit for the cost of replacement heaters. A false consumer name on the distributor's application raises serious and obvious questions as to whether the ultimate consumer is, in fact, obtaining the intended benefit from Smith's credit payment.

Service.

My recollection is that at the preliminary injunction hearing I testified to Smith's contract service requirements as they applied to plaintiff. Plaintiff's witnesses testified at the hearing that plaintiff had agreed to pay outstanding service bills for service out of Staten Island. The Court's opinion of May 1, 1975 credited plaintiff's testimony and found no real dispute between the parties on service. In his affidavit, sworn to September 16, 1975, Robert Schwimer explains that he is confused as to whether plaintiff ought to pay service costs for service outside of Staten Island which predate May 1, 1975. In

fact, plaintiff has continued to deduct the amounts of the service costs from payments due Smith. Since Robert Schwimer was clear on the requirement of payment at the hearing, it is very difficult for me to understand his supposed confusion now.

Summary comment.

I have done my best to comply with the Court's preliminary injunction order, and I believe there is nothing I or others at Smith have done which justifies Robert Schwimer's admitted villification of me and Bernard Gill, which justifies plaintiff's providing false warranty information, or continuing to withhold from payments to Smith amounts paid by plaintiff for service which Robert Schwimer said at the preliminary injunction hearing that plaintiff would pay, without charge back to Smith.

I feel the plaintiff has taken license with Smith and its personnel and shold not be permitted to do so.

Robert Schwimer seems determined to have a special status that other distributors of Smith products do not have. In his September 16, 1975 affidavit, he says in comment on Gerald Hurst's letter, annexed as Exhibit A to my affidavit, sworn to September 10, 1975.

> "As a closing statement Mr. HURST sets forth a veiled threat that they [Smith] will not continue to ship unless these few dollars totalling $830.00 in all, are not paid by September 15th."

Reply Affidavit of Paul Toth
in Support of Order to Show Cause

I read Robert Schwimer's comment as stating a belief that the Court's order protects plaintiff from paying amounts of a kind Smith properly requires from every other distributor.

I respectfully request serious consideration by this Court of the question of whether Smith ought to be forced to stay married to a distributor who takes the Court's preliminary injunction order as license to publicly malign Smith and its agents, to submit admittedly false "2501" warranty forms, and to thumb its nose at Smith's request for payment of "these few dollars totalling $830.00", and otherwise ignore obligations to Smith.

Paul Toth

Sworn to before me this
23 day of September, 1975

Notary Public

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires APRIL 16 1980

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- -X

STATEN ISLAND SUPPLY COMPANY, INC., :

Plaintiff, : REPLY AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE

- against - :

A. O. SMITH CORPORATION, EQUIPMENT DISTRIBUTORS CORP. and BROOKLYN UNION GAS COMPANY : 75 Civ. 461

Defendants. :

- -X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, BERNARD GILL, being duly sworn, depose and say:

I am District Manager of defendant A. O. Smith Corporation ("Smith"), familiar with dealings between plaintiff and Smith, and make this affidavit in support of the order to show cause issued by the Court on behalf of Smith and returnable September 19, 1975, and in reply to the opposing affidavit of Robert Schwimer sworn to September 18, 1975.

Villification

I know that Robert Schwimer often insists on insulting Paul Toth in my presence (and Paul's absence), and I am aware that Robert Schwimer expresses insults referring to Paul Toth and me in his conversations with other personnel of Smith. I

am not surprised that Robert Schwimer would feel free to do the same and insult me in his letters to Paul Toth and Dan Hall, and to insult me to others in the industry.

I do not take Robert Schwimer's insults lightly, and I do not think the Court should permit Robert to be so arrogant as to hide behind this Court's order and publicly express contempt for the personnel of Smith. Robert Schwimer did not think he had the right to villify me and Paul Toth until the Court entered its preliminary injunction order, and in fact, he didn't. That is the way it should be now.

The 5% discount on KEE heaters

I have reviewed the affidavit of Paul Toth sworn to on September 23, 1975, and the facts stated therein are true. I said nothing to plaintiff to suggest that submission to Smith of invoices for future payment and delivery would meet Smith's August 15th cut off date. It is obvious that such invoices do not meet Smith's terms, and in my call to Robert Schwimer on August 15, 1975 I merely stated the obvious.

My relation with plaintiff

I try my best to deal with plaintiff fairly and to adhere to this Court's preliminary injunction order. I admit to feeling timid toward plaintiff, since my words of assistance to plaintiff are often twisted by plaintiff to make it

appear I am unhelpful. For example, I expressed concern to plaintiff that it may have missed a mailing from Smith by inadvertence, and I promptly provided the needed item (not the April price list), and I now find that I am charged by plaintiff with having "consciously and deliberately withheld this information." I think I have done well in dealing fairly with plaintiff, considering plaintiff's campaign to villify me, and have provided information to plaintiff to the best of my ability.

Bernard Gill
Bernard Gill

Sworn to before me this
23 day of September, 1975

Joseph P. Giasi Jr.
Notary Public

JOSEPH P. GIASI, JR.
Notary Public State of New York
No. 24-6505065
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1976

DOCUMENT FOR FILING DATED SEPTEMBER 29, 1975
(COPY OF LETTER OF DON ALLEN RESNIKOFF, ESQ.,
OF TURK, MARSH, KELLY & HOARE, ATTORNEYS FOR
A. O. SMITH CORPORATION, TO LOUIS C. PULVERMACHER,
ESQ., ATTORNEY FOR PLAINTIFF, WITH ATTACHMENT)

COPY

TURK, MARSH, KELLY & HOARE
666 FIFTH AVENUE
NEW YORK, N.Y. 10019

GILBERT FREI
CARTER T. LOUTHAN
ALEXANDER L. CACCIA
GEORGE B. SNELL
HUYLER C. HELD
JOHN ANTHONY SMITH
JOHN G. FALACHE, Jr.
PAUL F. XASH
G. PETER CROSS
DON ALLEN RESNIKOFF
RALPH E. LERNER

DAVID KELLY
L. RANDOLPH MASON
EDWARD E. WATTS, Jr.
HARRY A. LEION
EDWARD M. CAMERON, Jr.
COUNSEL

CABLE ADDRESS
"MELOPOEIA"
TEL. 765-5600
"AREA CODE 212"

September 26, 1975
B2757

Re: Staten Island Supply Co., Inc. v.
A. O. Smith Corporation, et al.
75 Civ. 461

Louis C. Pulvermacher, Esq.
410 Park Avenue
New York, N. Y. 10022

Dear Mr. Pulvermacher:

Enclosed herewith is a self-explanatory letter from Mr. G. I. Hurst, Credit Manager of A. O. Smith Corporation to your client indicating a shortage against your client's account in the amount of $2,407.12.

We would like to have your suggestions on resolving this problem.

Very truly yours,

Don Allen Resnikoff

Don Allen Resnikoff

DAR:baa
Encl.

cc: Hon. Thomas C. Platt
Magistrate Vincent A. Catoggio

ATTACHMENT TO COPY OF LETTER OF DON ALLEN RESNIKOFF, ESQ., OF TURK, MARSH, KELLY & HOARE, ATTORNEYS FOR A. O. SMITH CORPORATION, TO LOUIS C. PULVERMACHER, ESQ., ATTORNEY FOR PLAINTIFF DATED SEPTEMBER 26, 1975)

September 24, 1975

AIR MAIL

Mr. Robert M. Schwimer
Staten Island Supply Company, Inc.
1390 Richmond Terrace
Staten Island, New York 10310

Dear Mr. Schwimer:

This letter concerns a deduction for $2,407.12 which was taken against your September check. An explanatory debit memo was not included, therefore, we must show this deduction as a shortage on our books against your account.

Under the circumstances, we are requesting your check for the deduction or an appropriate explanation within seven (7) days from the date of this letter. Upon expiration of the 7-day period, the matter will be referred to our legal counsel for his attention.

Very truly yours,

A. O. SMITH Corporation
Consumer Products Division

G. I. Hurst
Credit Manager

GIH:ic

DOCUMENT FOR FILING DATED SEPTEMBER 30, 1975
(COPY OF LETTER OF DON ALLEN RESNIKOFF, ESQ.
OF TURK, MARSH, KELLY & HOARE, ATTORNEYS FOR
A. O. SMITH CORPORATION, TO LOUIS C. PULVERMACHER,
ESQ., ATTORNEY FOR PLAINTIFF)

TURK, MARSH, KELLY & HOARE
666 FIFTH AVENUE
NEW YORK, N.Y. 10019

GILBERT FREI
CARTER T. LOUTHAN
ALEXANDER L. CACCIA
GEORGE B. SNELL
HUYLER C. HELD
JOHN ANTHONY SMITH
JOHN C. PALACHE, Jr.
PAUL F. NASH
G. PETER GROSS
DON ALLEN RESNIKOFF
RALPH E. LERNER

DAVID KELLY
L. RANDOLPH MASON
EDWARD E. WATTS, Jr.
HARRY A. LEIGH
EDWARD M. CAMERON, Jr.
COUNSEL

CABLE ADDRESS
"MELOPOEIA"
TEL. 765-5900
"AREA CODE 212"

September 24, 1975
B2757

Re: Staten Island Supply Co., Inc. v.
A. O. Smith Corporation, et al.

Louis C. Pulvermacher, Esq.
410 Park Avenue
New York, N. Y. 10022

Dear Mr. Pulvermacher:

Paul Toth advises that upon further investigation it appears the following mailings to plaintiff from Smith offices in Illinois may have been omitted:

6/5/75	Vacation shutdown notice
6/5/75	Pricing third quarter - no increase
6/17/75	Conservationist letter with specification sheets and technical data
8/75	Announcement of R.N. Clark promotion to Vice President
8/26/75	Announcement of food waste disposer program.

Upon request, such of this material as your client requires will be promptly provided. Part of the 6/17/75 mailing mentioned above has already been provided to your client by Bernard Gill. The scheduled August 20, 1975 mailing concerning October pricing was provided by Bernard Gill in August.

Very truly yours,

Don Allen Resnikoff

Don Allen Resnikoff

DAR:baa

cc: Mr. Paul Toth

SUPPLEMENTAL AFFIDAVIT OF DON ALLEN RESNIKOFF
IN SUPPORT OF ORDER TO SHOW CAUSE SWORN
TO NOVEMBER 14, 1975, AND EXHIBITS A-C

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- -X

STATEN ISLAND SUPPLY COMPANY, INC., :

Plaintiff, :

- against - :

A. O. SMITH CORPORATION, EQUIPMENT :
DISTRIBUTORS CORPORATION and
BROOKLYN UNION GAS COMPANY, :

Defendants. :

- -X

SUPPLEMENTAL AFFIDAVIT
IN SUPPORT OF ORDER TO
SHOW CAUSE

75 Civ. 461

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, DON ALLEN RESNIKOFF, being duly sworn, depose and say:

I am a member of the firm of Turk, Marsh, Kelly & Hoare, attorneys for defendant A. O. Smith Corporation ("Smith") and I make this affidavit to bring to the Court's attention certain facts relevant to Smith's pending application made by order to show cause that was heard September 9, 1975, which has not yet been decided by this Court, seeking, inter alia, dissolution of the outstanding preliminary injunction.

Disparagement of Smith representatives

On or about November 5, 1975, Robert Schwimer, Vice President of plaintiff, apparently published to Smith distributors a written statement containing Robert

Schwimer's disparaging characterization of Paul Toth of Smith as a "clown", "creep", and lacking in business judgment. The vehicle for the publication by Robert Schwimer was, on information and belief, the personal letter of Paul Toth to Robert Schwimer dated November 3, 1975, a copy of which is annexed hereto as Exhibit A(2). Paul Toth's letter to Robert Schwimer restates and comments on the disparaging remarks contained in Robert Schwimer's letters of August 27, 1975 to Dan Hall and Paul Toth. Robert Schwimer apparently made copies of Paul Toth's personal letter restating the disparaging words, and mailed it to some Smith distributors with an accompanying "Dear Distributor" note, a copy of which is annexed hereto as Exhibit A(1).

Paul Toth's personal letter, directed only to Robert Schwimer, did not publish Robert Schwimer's disparaging remarks against Paul Toth to Smith distributors. Therefore, Robert Schwimer's mailing to Smith distributors was the first publication to the distributors of the disparaging remarks of Robert Schwimer directed against Paul Toth in his capacity as a Smith representative.

Robert Schwimer's extraordinary publication of disparaging remarks is obviously harmful to Smith. Plaintiff has made it clear, once again, that plaintiff is abusing the

Court's preliminary injunction order by using the order as a license to damage A. O. Smith Corporation.

Reasons for plaintiff's circulation to distributors of disparaging words about Paul Toth are suggested in the letter of plaintiff's counsel, Louis C. Pulvermacher, a copy of which is annexed hereto as Exhibit B. It is respectfully submitted that Robert Schwimer's personal pique does not justify actions by plaintiff clearly tending to damage Smith. (Incidentally, Smith does not concede that plaintiff's mailings were limited to three Smith distributors as claimed by Mr. Pulvermacher. The use of the "Dear Distributor" salutation is clearly indicative of a wider distribution. A wider distribution is also indicated by reports received by Smith from distributors.)

Background concerning the most recent circulation by plaintiff to Smith distributors of disparaging remarks

The most recent publication of disparaging remarks is inconsistent with representations of plaintiff. In his affidavit of September 18, 1975 in opposition to Smith's application to dissolve the preliminary injunction, Robert Schwimer offered the following comments on (1) the "clown", "creep", and "lacking in business judgment" aspersions in Robert's correspondence of August 27, 1975 to Dan Hall and Paul Toth of Smith, and (2) Robert's statement in that correspondence that he had shown the disparaging comments to "everyone in the industry":

> "I respectfully offer my apologies for the use of certain words in describing Messrs. TOTH and GILL. I did not, as was threatened, communicate any material to SMITH distributors and sub-distributors. The Court will recognize that the frustration, embarrassment and loss of sales that these two gentlemen have caused me both prior to and since the granting of the preliminary injunction; the loss of sales of the KEE Heaters was the basis of my frustration. I am aware that I should not reflect my frustrations on losing sales notwithstanding Messrs. GILL and TOTH's continuing campaign to destroy plaintiff's business. Such expression will not occur again." (emphasis added) Schwimer affidavit sworn to September 18, 1975, page 5.

"Such expression" has "occurred again", and, once again, "frustration and embarrassment" are assigned as a reason. However, plaintiff's extraordinary business behavior, obviously damaging to Smith, underlines the point previously made to the Court that plaintiff in fact has violated the expectation of this Court's order of May 1, 1975 that plaintiff would act in a reasonable business manner consistent with preservation of the status quo.

As suggested in Smith's reply memorandum to this Court dated September 23, 1975:

> "The alternative of issuing no remedial order as a consequence of plaintiff's activities during the preliminary injunction period would strongly suggest a license to plaintiff to do as it pleases with Smith and its agents, subject only to later apologies and explanations of plaintiff based on claims of confusion and provocation."

Failure to pay bills in accordance with Smith statements

Plaintiff's payment to Smith due October 15, 1975, was, on information and belief, $4,578.91 short of the balance of $29,589.00 called for in Smith's statement dated 9-30-75, a copy of which is annexed hereto as Exhibit C(1). Annexed as Exhibit C(2) is the letter of Smith's Credit Manager dated October 27, 1975 demanding payment.

The legal issue is whether plaintiff may use the pending preliminary injunction order as a license for avoidance of usual sanctions for non-payment of amounts due Smith. It is respectfully submitted that plaintiff's persistent refusal to pay its bills constitutes abuse of the pending preliminary injunction order. The preliminary injunction order clearly does not operate to deprive Smith of usual sanctions for plaintiff's non-payment, including cut-off of deliveries (of course, subject to legal remedies available to distributors generally). This Court should disabuse plaintiff of any contrary notion.

At the conference of the parties before Magistrate Catoggio on October 31, 1975, the Magistrate recommended to plaintiff's counsel that plaintiff ought to pay amounts shown on Smith's statements to be owing, or face cut-off of deliveries

Specific amounts owing

Exhibit C(1), Smith's 9-30-75 statement, indicates deficiencies in payment by plaintiff by the code "4", meaning "shortage". The deficiencies in payment shown on the statement, totaling $4,578.91, consist of the following items marked "4" on the statement, which are set out here in the same order as they appear on the statement:

Invoice or Credit No.	
9538	SISCO's claimed deduction for $180.00 dates from January 17, 1975, and is for services in Brooklyn-Queens for which plaintiff, not Smith, must pay, and so is not allowed.
9995	On April 17, 1975, SISCO deducted $270.25 from check #9995 with no explanation. SISCO's deduction, made without explanation, is therefore not allowed.
9995	On April 17, 1975 there is another deduction by SISCO from the same check (9995) for $270.00 for service work in Brooklyn-Queens for which plaintiff, not Smith, must pay.
7175081270	On July 17, 1975 there is a deduction by SISCO for $63.50 from invoice #7175081270. That represents an unauthorized 5% discount on commercial water heaters, which has not been allowed.
7175881260	On that same date, July 17, 1975, a similar deduction for $215.50 was made from invoice #7175081260. That was also for an unauthorized 5% discount on commercial water heaters and has not been allowed.

7175144760 — On the same date, July 17, 1975, a deduction for $13.39 was made from invoice #7175144760. That was for the same unauthorized 5% discount on commercial heaters, but Smith was promised that it would be paid in October, which it was not.

10525 — On October 19, 1975 a deduction for $609.62 was made from check #10525. That represents an unauthorized 5% discount on KEE water heaters.

10525 — On the same date and the same check number, a deduction for $549.53 was made for the return of a BT 365. Credit will be issued against this upon Smith's determination that the heater was in fact defective.

10652 — On September 19, 1975 a deduction for $2,407.12 was made on check #10652. That represents an unauthorized 5% discount on KEE heaters.

On information and belief, these deficiencies in payment continue, although plaintiff is and has been well aware of the amount of payments due Smith, and why the amounts are due.

Other Issues

Plaintiff's admitted wrongdoing in areas of warranty administration, service costs, vilification, and non-payment of amounts owing, as set out in A. O. Smith Corporation's original submissions on its motion seeking dissolution of the preliminary injunction, remains unsolved.

Conclusion

For the foregoing reasons, and for reasons set out in A. O. Smith Corporation's original submissions on its motion concerning continuance of the preliminary injunction,

which motion was returnable September 9, 1975, it is respectfully requested that the Court issue appropriate orders on the motion. As pointed out previously:

> "It is not suggested that plaintiff should not have a trial on its various antitrust claims, with compensatory and punitive damages going to plaintiff if it prevails. It is suggested that the Court should exercise appropriate control over its pending order because plaintiff has violated the status quo and used the preliminary injunction order as special license to publicly vilify Smith's agents; as special license to submit false warranty information to Smith; and as special license to refuse payments due Smith, and to act in disregard of Smith's business needs.
>
> In the usual case (such as that cited by plaintiff in its memorandum of law) a plaintiff does not have the power of plaintiff in this case to distort the status quo and abuse a preliminary injunction order. A plaintiff-distributor does have the power to distort the status quo and abuse a preliminary injunction order, and the Court clearly should control its order in light of that.
>
> The authority and obligation of this Court to control its order to avoid inequity is clear, and requires no further legal citation." Smith's reply memorandum dated September 23, 1975.

It should be added that this Court's control of its order is the only practical remedy for harm to Smith by plaintiff occurring during the period of the preliminary injunction. It is respectfully submitted that this Court has a special responsibility to act on Smith's requests concerning administration and continuance of the preliminary injunction order, because the requests for relief which have been made by

Smith concerning supervision of the preliminary injunction "are not of the kind that will be merged into any final judgment and thus capable of correction on appeal." International Business Machines Corporation, Petitioner, against Honorable David N. Edelstein, Chief Judge, United States District Court, Southern District of New York, and United States of America F. 2d (2nd Cir., Docket No. 489, decided October 30, 1975). The harm being caused Smith by plaintiff's abuse of the preliminary injunction order is essentially without remedy except exercise by this Court of control over its preliminary injunction order to prevent abuse.

Don Allen Resnikoff

Sworn to before me this
14 day of November, 1975.

EILEEN E. LANE
Notary Public State of New York
No. 30-7418000
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1976

Notary Public

EXHIBIT A(1)

STATEN ISLAND SUPPLY CO., INC.
1390 RICHMOND TERRACE
STATEN ISLAND, N.Y. 10310
PHONE: 442-1106

NOVEMBER 5, 1975

DEAR DISTRIBUTOR:

SORRY I WILL NOT SEE YOU AT THE TIDES WEEKEND.

ENCLOSED IS THE EXPLANATION.

SINCERELY,

RECEIVED
1975 NOV -7 AM 10: 36

EXHIBIT A(2)

CONSUMER PRODUCTS DIVISION • 825 LEHIGH AVENUE • UNION, NEW JERSEY 07083 • 201 686-9000

A. O. Smith CORPORATION

November 3, 1975

Mr. Robert Schwimer
Staten Island Supply
1390 Richmond Terrace
Staten Island, NY 10310

Dear Bob:

We will shortly send you an A. O. SMITH CORPORATION check for $400 which is the value of The Tides Inn Promotion social weekend, in which some of A. O. SMITH's distributors will be participating. As you know, the trip is purely social and of no business benefit to the A. O. SMITH distributors who participate.

You are one of the distributors who qualifies for the benefits of the promotion because of a last minute liberalization of the rules, and we inform you of this because we want to be scrupulous in being fair to you.

We are not inviting you to attend The Tides weekend personally partly because in your letters of August 27, 1975, to Dan Hall and me, you explained that you have circulated to everyone in the industry that knows me a letter referring to me as a "clown," "creep," and lacking in business judgment, and also that you intended to degrade me to other A. O. SMITH distributors.

I know that after our attorney brought your letters to the attention of Judge Platt you stated you were sorry to circulate insults about my performance as an A. O. SMITH representative, and said you wouldn't do it again, but I also know that you have actually insulted me to other A. O. SMITH employees.

We wish to avoid a situation where the presence of a number of A. O. SMITH distributors may tempt you to intemperate remarks and think it reasonable to provide you with the cash value of a social weekend in order to do that.

Very truly yours,

A. O. SMITH CORPORATION

Paul P. Toth
Regional Sales Manager
Consumer Products Division

PPT:pas

207

Exhibit A(2)

EXHIBIT B

LOUIS C. PULVERMACHER, P.C.
ATTORNEY AT LAW
410 PARK AVENUE
NEW YORK, N.Y. 10022

212 PLAZA 8-8001

November 10, 1975

Don Allen Resnikoff, Esq.
Messrs. Turk, Marsh, Kelly & Hoare
666 Fifth Avenue
New York, N.Y.
10019

Staten Island Supply Co. v. A.O. Smith Corp., et al

Dear Mr. Resnikoff:-

I have your hand delivered letter of November 7th. Mr. Schwimer had been under the belief that he would be treated in the same way as the other distributors who made their points and would be invited to The Tides Inn Promotion. He made arrangements with the other distributors to meet them and partake in the joyous festivities afforded to the distributors of A.O. Smith.

Due to the actions of Mr. Toth, Mr. Schwimer was embarrassed and held up to ridicule. Mr. Schwimer circulated Mr. Toth's letter to three distributors with a hand written note, expressing his regrets, that he would not be able to meet with them as planned. I am quite surprised that Mr. Toth should take offense and that you should dignify his chagrin, in having his statement circulated. Mr. Schwimer did not circulate the letter to the distributors of Smith. He sent it to three distributors as stated.

So far as my prior knowledge of the matter, I must respectfully suggest that it is impertinent to request such information, as well as the fact that it is a confidential communication with my client.

Very truly yours,

Louis C. Pulvermacher

Louis C. Pulvermacher
(Dictated but not read)

LCP/rr

CONSUMER PRODUCTS
KANKAKEE, ILLINOIS U.S.A. 60901

P.O. BOX 4354
CHURCH ST. STATION
NEW YORK, N.Y. 10249

STATEN ISLAND SUPPLY COMPANY 71 1
1390 RICHMOND TERRACE X
STATEN ISLAND NY 10310

CUST. NO. 4820 DATE 9-30-75 PAGE 1

CODES
0-OVERPAYMENT
3-UNAPPLIED CASH
4-SHORTAGE
5-DOWN PAYMENT
8-INVOICE
9-CREDIT MEMO

PRODUCTS
DOMESTIC WATER HEATERS
COMMERCIAL WATER HEATERS
HEATING PRODUCTS

DATE	INVOICE OR CREDIT NO.	CODE	DUE DATE	DEBITS	CREDITS	BALANCE
1 17 75	9538	4	2-15-75	180.00	SERVICE	
4 17 75	9995	4	5-15-75	270.25	?	
4 17 75	9995	4	5-15-75	270.00	SERVICE	
7 17 75	7175081270	4	8-15-75	63.50	5% COMMERCIAL HTR. NOT ALLOWED	
7 17 75	7175081260	4	8-15-75	215.50		
7 17 75	7175144760	4	8-15-75	13.39	WILL PAY IN OCT.	
8 19 75	10525	4	9-15-75	609.62	5% KEC HTRS	
8 19 75	10525	4	9-15-75	540.53	RETURNED AT 365	
9 03 75	7175226540	8	10-16-75	3,055.05		
9 05 75	7175165821	8	10-16-75	388.12		
9 05 75	7175220730	8	10-16-75	1,030.60		
9 09 75	718492	9			60.88	
9 10 75	7175211150	8	10-16-75	10,509.01		
9 17 75	7175243260	8	10-16-75	592.10		
9 19 75	7175211151	8	10-16-75	1,079.19		
9 19 75	10652	4	10-15-75	2,407.12	5% KEC HTRS.	
9 24 75	712961304	9			561.90	
9 24 75	7175225310	8	10-16-75	5,177.42		
9 24 75	7175249740	8	10-16-75	1,110.90		
9 24 75	7175249750	8	10-16-75	455.95		

CHECKS MUST BE SENT TO THE ABOVE P.O. BOX

FORM © 469 REV. 12

209

205

EXHIBIT C-1

Deduction

2,177.79

2,4

4,54

A. O. Smith
CONSUMER PRODUCTS
KANKAKEE, ILLINOIS U.S.A. 60901

COPY TO MAKE ADDRESS
[illegible] BOX 25
[illegible] 701

P.O. BOX 4354
CHURCH ST. STATION
NEW YORK, N.Y. 10249

STATEN ISLAND SUPPLY COMPANY 71 1

CUST. NO. 4820 DATE 9-30-75 PAGE 2

CODES
0-OVERPAYMENT
3-UNAPPLIED CASH
4-SHORTAGE
5-DOWN PAYMENT
8-INVOICE
9-CREDIT MEMO

PRODUCTS
DOMESTIC WATER HEATERS
COMMERCIAL WATER HEATERS
HEATING PRODUCTS

DATE	INVOICE OR CREDIT NO.	CODE	DUE DATE	DEBITS	CREDITS	BALANCE
9 24 75	7175249760	8	10-16-75	639.50		
9 24 75	7175249770	8	10-16-75	639.50		
9 24 75	7175249780	8	10-16-75	1,534.80		
9 26 75	712981304	9			578.45	
						29,589.78 *

[illegible] ABOVE LOCATION

FORM P 469 REV. 12

210

EXHIBIT C (2)

EXHIBIT C(2)

October 27, 1975

Mr. Robert M. Schwimer
Staten Island Supply Company, Inc.
1250 Richmond Terrace
Staten Island, New York 10310

Dear Mr. Schwimer:

We have received your October check and find it did not include payment of open deductions totaling $4,578.91.

We again are requesting payment of these items and by copy of this letter are referring them to legal counsel for appropriate action.

Very truly yours,

A. O. SMITH Corporation
Consumer Products Division

C. L. Pruett
Credit Manager

CLP:ic

SUPPLEMENTAL AFFIDAVIT OF DON ALLEN RESNIKOFF IN SUPPORT OF ORDER TO SHOW CAUSE SWORN TO JANUARY 5, 1976, AND EXHIBITS A-B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- X

STATEN ISLAND SUPPLY COMPANY, INC.,

Plaintiff,

- against -

A. O. SMITH CORPORATION, EQUIPMENT DISTRIBUTORS CORP. and BROOKLYN UNION GAS COMPANY,

Defendants.

SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE

75 Civ. 461

- X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, DON ALLEN RESNIKOFF, being duly sworn, depose and say that I am a member of the firm of Turk, Marsh, Kelly & Hoare, attorneys for defendant A. O. Smith Corporation ("Smith") and make this affidavit in support of Smith's motion, brought on by order to show cause, to dissolve the preliminary injunction.

1. Attached hereto as Exhibit A(1) is, upon information and belief, a true copy of letter from Wolfgang Klebe to defendant A. O. Smith Corporation with enclosures (Exhibits A(2) and A(3) annexed hereto). Also annexed hereto as Exhibit B is a copy of a warranty replacement report for the replacement of Mr. Klebe's unit, Serial #750671M21382, which was submitted by

plaintiff to Smith, as set forth in the Affidavit of Daniel V. Hall, sworn to September 11, 1975, previously filed in this action.

2. Plaintiff has admitted that the annexed warranty report was falsified, but has claimed that such falsification was the result of an attempt to cover up the fact of sales made by plaintiff outside of Staten Island and the result of a lack of knowledge as to the identity of the end user. (Affidavit of Robert Schwimer sworn to September 18, 1975.)

3. Mr. Klebe (identified in the warranty report as "Mr. Veri") does not reside outside of Staten Island, and, as his letter demonstrates, his identity was known to plaintiff. (The warranty report clearly relates to Mr. Klebe's unit: the copy of the guarantee enclosed with Mr. Klebe's letter [Exhibit A(3)] and the report prepared by plaintiff show the same serial number for the heater which was replaced.)

Yet, the unescapable fact is that plaintiff falsified the warranty report covering the replacement involving Mr. Klebe, clearly known to plaintiff to be a Staten Island resident.

4. The falsification of a warranty report involving the sale of a Smith product <u>on Staten Island</u> and involving an end user whose identity was known to plaintiff demonstrates that

there are other reasons for the cover-up engaged in by plaintiff which go far beyond plaintiff's claimed fear of termination for selling outside of Staten Island.

The use of a falsified consumer name on plaintiff's warranty reports precludes the usual follow up letter of Smith to the consumer, the obvious purpose of the Smith follow up letter being to unearth distributor wrongdoing.

Does plaintiff frequently impose charges on the consumer for the replacement heater which violate Smith's warranty administration? (See testimony of Paul Toth at preliminary injunction hearing, Transcript, p. 64, line 9 through p. 65, line 12.) Plaintiff's falsification program precludes an answer, except it is clear that plaintiff's warranty falsifications during the preliminary injunction period have the purpose and effect of harming Smtih.

Don Allen Resnikoff

Sworn to before me this
5th day of January, 1976.

Notary Public

JOSEPH P. GIASI, JR.
Notary Public State of New York
No. 24-0505065
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30 1976

EXHIBIT A(1) 10-07-6-27

KUEHNE + NAGEL

Wolfgang Klebe
U. S. Representative

International Freight Forwarding Organisation with offices in:
Aachen Abidjan Alicante Amsterdam Ancona Ankara Antwerpen Athinai Augsburg Baghdad Bandar Shahpur Bangkok Barcelona Basel Basran Beirut/Beyrouth Berlin Bielefeld Bilbao Birmingham Bogota Bologna Bonn Bradford Braunschweig Bregenz Bremen Bremerhaven Bristol Bruxelles/Brussel Buenos Aires Calgary Cape Town Caracas Charlotte Chiasso Chicago Djulfa Durban Dusseldorf Edmonton Firenze Frankfurt Furth Genève Genova Guadalajara Hagen Hamburg Hamilton Hannover Harwich Hong Kong Houston Iran Istanbul Jeddah Johannesburg Kabul Kaohsiung Karachi Karlsruhe Kassel Khorramshar Kiel Koblenz Koln Kuwait Leicester Le Havre Lima Lisboa Liverpool London Los Angeles Lubeck Luxembourg Madrid Manchester Manila Mannheim Melbourne Mexico Milano Mombasa Monchengladbach Monterrey Montevideo Montreal Munchen Münster Nairobi New York Nürnberg Osaka Oslo Ottawa Paris Passau Port Elizabeth Porto Quebec Regensburg Rio de Janeiro Rotterdam Saarbrücken Salzburg Santiago de Chile Sao Paulo Singapore Stuttgart Sydney Taipei Teheran Thessaloniki Tokyo Torino Toronto Trieste Ulm Valencia Vancouver Venlo Villingen Wien Winnipeg Wuppertal Zürich

A. O. Smith Corporation
Consumer Products Div.
PERMAGLAS
Kankakee, Ill.

Your ref.	Your letter	Our ref.	New York
-	-	KL:iw	June 23, 1975

Gentlemen:

Subject: Replacement of A. O. SMITH Electro Heater due to leaks

The model No. PEN 40, installed on Jan. 20, 1969, had to be replaced due to water leaks on May 28th, 1975. Due to the Ten Year Guarantee - as per attached Form No. 38361 - the water heater has been replaced by the company JAMES J. BRADY PLUMBING CORP., 293 Victory Boulevard, Staten Island, N.Y. 10301.

Above mentioned Plumbing Corp. had to pay $ 35.00 on freight charges to a local dealer, the company Staten Island Supply Co., 10310 Richmond Terrace.

Despite the fact that - as per the Ten Year Guarantee - " All replacements shall be F.O.B. cars at destination, and the purchaser shall be liable for local delivery charges ", a Gentleman by the name of Mr. Schwimmer of the Staten Island Supply Co. indicated that the Plumbing Corp. had to pay freight charges from the factory to New York, otherwise I would have to pick up the water heater myself from the factory.

Please note that the Plumbing Corp. picked up themselves the water heater from the dealer and they took care of the removal of the damaged unit.

I feel that the policy of the Staten Island Supply Co. is not in accordance with the guarantee terms of your company.

...../ 2

EXHIBIT A

[redacted]

I kindly ask you to correct the handling of your dealer in order to keep up with your fine reputation.

As the Plumbing Corp. had to pay $ 35.00 when picking up the replacement unit, I will pay this amount to the Plumbing Corp., expecting, however, an adjustment from either you or the Staten Island Supply Co.

Attached hereto please find a copy of the Ten Year Guarantee, as well as a copy of the bill from the James J. Brady Plumbing Corp.

Looking forward to hearing from you soon, I remain,

very truly yours,

Wolfgang Kiebe

Encs.

cc: James J. Brady Plumbing Corp.
cc: Staten Island Supply Co.
1390 ~~10310~~ Richmond Terrace,
Staten Island, N.Y. 10310

EXHIBIT A(2)

JUTTA KLEBE
WOLFGANG KLEBE
27 FORT HILL CIRCLE STATEN ISLAND, N. Y. 10301

No. 412

1-108
210

19

PAY TO THE ORDER OF James J. Brady Plumbing Corp. $ 184.12

One hundred eighty four 12/100 DOLLARS

MARINE MIDLAND BANK
-NEW YORK
140 BROADWAY, NEW YORK, N. Y. 10015

FOR

⑆0210⑆0108⑆ 001⑈84146⑈ 7⑈

PHONE:
GIBRALTAR 7-4144

JAMES J. BRADY PLUMBING CORP.

IN TRADE SI
EST. 19

LICENSE NO. 0238

PLUMBING AND HEATING
SPECIALIZING IN REPAIR SERVICE
293 VICTORY BOULEVARD
STATEN ISLAND, N. Y. 10301

Wolfgang Klebe
Fort Hill Cir.
. N.Y. 10301

May 28, 19

ORDER NO. 25715

Replace A.O. Smith electric heater.
Rewasher bath hot water faucet.

		N/C	
1	40 gal. replacement heater	4	75
1	½" Watts relief valve		80
1	¾"x½" brass bushing	3	10
1	¾"x6" " nipple	1	76
1	¾"x90° " elbow	2	45
1	¾"x6" " nipple	1	82
1	Re-Nu seat		20
1	Fibb washer & screw		
	Material	15	02
	Service	67	50
		82	52
	8% Tax	6	60
		89	12
	Freight chg.	35	00

Exhibit A(2) 217

... 30 DAYS AFTER STATEMENT DATE ...

$ 17

EXHIBIT A(3)

Ten Year Guarantee

This certificate properly filled out shall constitute a guarantee and agreement between A. O. SMITH Corporation and the owner as follows:

If within one year after original installation of water heater any part or portion shall prove upon examination by the Corporation to be defective in material or workmanship, the Corporation will repair or exchange such part or portion, at our option. If the glass-lined steel tank in the heater leaks due to rust, corrosion or other chemical action of water within the first ten years after original installation of the heater, the Corporation will supply a complete new heater, of equivalent size and grade, and then current model. The replacement heater would be furnished with a guarantee extension sufficient to cover the unexpired portion of the original installation.

All replacements shall be F.O.B. cars at destination, and the purchaser shall be liable for local delivery charges, removal and installation costs.

This guarantee shall apply only while the heater remains installed in its original location in accordance with local plumbing and building codes, ordinances and regulations, where such installation includes a pressure relief valve and a temperature relief valve, or a combination pressure and temperature relief valve, or a pressure relief valve and a high temperature energy shut off device, and when the heater has been used only (a) at temperatures not exceeding the maximum setting of its thermostat; (b) at ordinary tap water pressure not exceeding pressure ratings shown on the heater and (c) for DOMESTIC purposes.

THIS GUARANTEE IS LIMITED TO A PERIOD OF THREE YEARS FROM DATE OF ORIGINAL INSTALLATION WHEN THE WATER HEATER HAS BEEN USED FOR COMMERCIAL, INSTITUTIONAL, INDUSTRIAL OR ANY OTHER NON-DOMESTIC PURPOSE.

Any accident to the water heater, any misuse, abuse or alteration of it, any operation of it in a modified form, or any attempt to repair leaks will void this guarantee.

No other guarantee or warranty, either expressed or implied, has been or will be made in behalf of the Corporation with respect to the heater or the installation, operation, repair or replacement of the heater. The Corporation shall not be liable by virtue of this guarantee or otherwise for damage to any persons or property.

This guarantee applies only to MODEL PEN

A. O. Smith
CONSUMER PRODUCTS DIVISION
KANKAKEE, ILL.

Model No. PEN 40

Serial No. 7506? PM 21352

Date Installed JAN. 2?, 1961

Dealer's Name [illegible]

Address [illegible]

City and State [illegible]

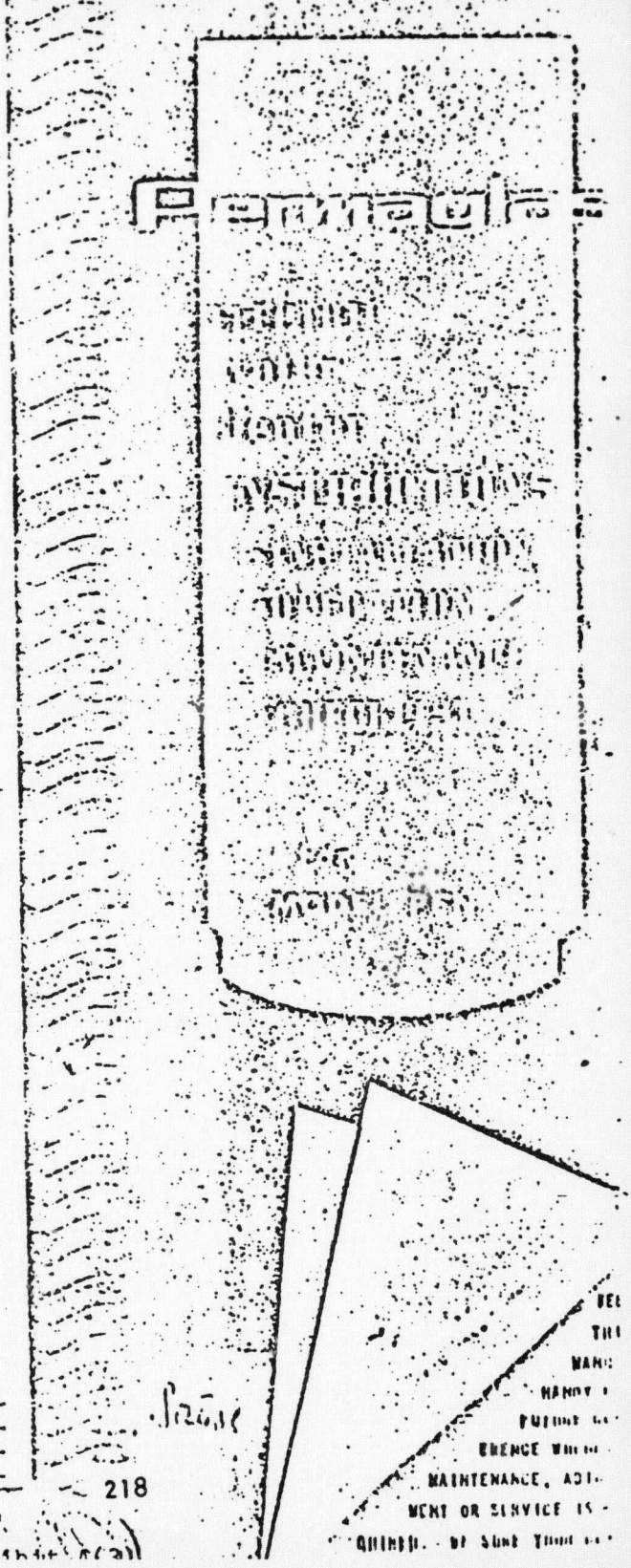


EXHIBIT B

WATER HEATER WARRANTY REPLACEMENT REPORT

DO NOT USE THIS FORM FOR PARTS REPLACEMENT

PLEASE MAIL THIS COPY (NO. 2) TO YOUR PRODUCT SERVICE BRANCH AND RETAIN HEATER UNTIL RECEIPT OF OUR INSTRUCTIONS WITHIN NEXT FEW DAYS

0022601

DISTRIBUTOR OR UTILITY NAME	1	SEQ. 2-3	BR 4	CREDIT NO. 5-8	AOS ACCT. NO. 10-15	CUST. REFERENCE NO. 16-25
[illegible] Supply Co Inc	S	4	6	03365	482000	0022601

ADDRESS, CITY, STATE, ZIP CODE: 1390 Richard Terrace S l h y 810

DEFECTIVE HEATER DATA

27-31 MODEL	GALS. 32-35	ELEM. 36 (S)	A7 37 (7)	BAKSPL 38 (B)	CLNOUT 39 (C)	TYPE 40	UNR. 41 (U,N,D)	COM. 42 (C)	MIL 43 (M)
PEN 40	✓								

SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58	INSTALL. DATE 59-60	61-62	FAILURE DATE 63-64	65-66	MOS. 67-69	DIST. 70-72	CODE 73	DOL. 74-80
75067				1M21382 ✓	12	8 67	5	8 75	89			

REPL. HTR. DATA

1	2-25	AUTH. 26 (A)	27-31 MOD. - GAL. 32-35	EXPIRES 36-37	38-39	YEARS 40-41	SERIES 44-49	YR. 50-51	LN. 52	MO. 53	SERIAL 54-58
T	DUP.		PEN 40		780		74-	675	87		

INSTALL. DATE 59-60 / 61-62 — 63-80 TITLE: MR. VERI — 12/77-10

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U						LA		

1	SEQ. 2-3	BR. 4	CREDIT NO. 5-8	ACCT. NO. 10-15	CUST. REFERENCE 16-25	26-49 DESCRIPTION	CODE 73	DOL. 74-80
U						HA		

1	2-9	10-40 END USER'S NAME	41-59 ADDRESS
V	DUP.	Veri	84 Pabst St

60-73 CITY	STATE 74-75	ZIP CODE 76-80	DESCRIPTION OF FAILURE
S l h y			Leaks

DEALER NAME, ADDRESS, CITY AND STATE:

REMARKS:

DATE	SIGNATURE	SEND MORE FORMS	ENVELOPES
5 30 75	[signature]	☐ PSD-2501D	☐

PSD-2501B-774

MAIL THIS COPY TO YOUR PRODUCT SERVICE BRANCH

Returned 6/2

DOCUMENT FOR FILING DATED JANUARY 5, 1976
(COPY OF LETTER OF LOUIS C. PULVERMACHER, ESQ., ATTORNEY FOR PLAINTIFF, TO DON ALLEN RESNIKOFF, ESQ., OF TURK, MARSH, KELLY & HOARE, ATTORNEYS FOR DEFENDANT A. O. SMITH CORPORATION, WITH ATTACHMENT)

LOUIS C. PULVERMACHER, P.C.
ATTORNEY AT LAW
410 PARK AVENUE
NEW YORK, N.Y. 10022

212 PLAZA 8-8001

December 9, 1975

Don Allen Resnikoff, Esq.
Messrs. Turk, Marsh, Kelly & Hoare
666 Fifth Avenue
New York, N.Y.
10019

Staten Island Supply Co. v. A.O. Smith Corp., et al
(Report of Consumer Sales by Sisco)

Dear Mr. Resnikoff:-

For the period May 1 through October 31, 1975, Staten Island Supply Co., delivered 120 units, 15 of which were warranty replacements. Direct sales including warranty replacements were 43 units to consumers on Staten Island, making original total sales 28.

Sales on a wholesale basis to the trade were 77. There were no consumer sales off Staten Island, in the areas of New York City, Long Island, New Jersey and Connecticut. All sales into such areas were to plumbing supply houses only.

I enclose herewith a detail of the consumer sales on Staten Island, together with the detail of trade sales in Staten Island from May 1st through October 31st, 1975.

Very truly yours,

LCP/rr
Enc.

cc: Vincent A. Catoggio
United States Magistrate

ATTACHMENT TO COPY OF LETTER OF LOUIS C. PULVERMACHER, ESQ., ATTORNEY FOR PLAINTIFF, TO DON ALLEN RESNIKOFF, ESQ., OF TURK, MARSH, KELLY & HOARE, ATTORNEYS FOR A. O. SMITH CORPORATION DATED DECEMBER 9, 1975

A. O. SMITH SALES RECORD: MAY 1, THRU OCT. 31, 1975

MODEL	TOTAL	STATEN ISLAND CONSUMMER SUPPLIES OWN HOOK UP	STATEN ISLAND TRADE	
PGD	48	25	23	
PGX	34	8	26	
KEE	30	10	20	
PEN	8	0	8	
WARRANTEE REPLACEMENTS +15	120	43 -15	77	
	105	28	77	

MEMORANDUM AND ORDER OF PLATT, D.J.
DATED JANUARY 15, 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

STATEN ISLAND SUPPLY COMPANY, INC.,

Plaintiff,

-against-

A. O. SMITH CORPORATION, EQUIPMENT DISTRIBUTORS CORPORATION and BROOKLYN UNION GAS COMPANY,

Defendants.

- -x

75 Civ. 461

MEMORANDUM AND ORDER

January 15, 1976

PLATT, D.J.

By order to show cause returnable September 19, 1975, defendant A.O. Smith Corporation ("Smith") moved for an order dissolving the preliminary injunction directed by the Court herein in an order dated May 1, 1975, and by notice of motion returnable October 10, 1975, said defendant moved for an order pursuant to FRCP 37(d) striking plaintiff's complaint and dismissing the action with prejudice.

At the request of counsel for Smith and without objection from counsel for the plaintiff, on December 23, 1975, this Court referred these motions to Magistrate Vincent A. Catoggio, pursuant to General Rule 25.1 of this Court and 28 U.S.C. § 636(b)(2), for hearing and report.

Memorandum and Order of Platt, D.J.
Dated January 15, 1976

Defendant Smith's motion to dismiss was based on the ground that plaintiff had willfully failed to serve answers or objections to written interrogatories. This Court notes that answers under oath were served on December 16, 1975.

In a seven page report to this Court dated January 8, 1976, Magistrate Catoggio concludes that "it is my opinion that A. O. Smith has failed in its efforts to show the existence of new facts such as would justify dissolution of the preliminary injunction granted herein under date of May 1, 1975".

In view of the foregoing and on the basis of the Magistrate's report, defendant Smith's aforesaid motions must be and the same hereby are denied.

SO ORDERED.

Thomas C. Platt
U.S.D.J.

REPORT OF MAGISTRATE VINCENT A. CATOGGIO
TO PLATT, D.J. DATED JANUARY 8, 1976

UNITED STATES GOVERNMENT

Memorandum

TO : HONORABLE THOMAS C. PLATT
United States District Judge

DATE: January 8, 1976

FROM : Vincent A. Catoggio
United States Magistrate

SUBJECT: Staten Island Supply Co., Inc. v.
A. O. Smith, et al.
Civil Action No. 75 C 461

Your memorandum dated December 23, 1975 refers to me for report, the pending application of A. O. Smith to dissolve the preliminary injunction herein and other kindred matters.

At a conference held January 6, 1976, with the attorneys for the several parties, A. O. Smith submitted a brief to me together with a bound volume of all papers including briefs which earlier had been submitted in support of its motion to dissolve the injunction, with the request that I make a report to you.

Accordingly, I deal with the points discussed in Smith's brief submitted to me, seriatim:

1. Plaintiff's public disparagement of Smith employees i.e. a single letter called them "clowns and creeps" and accused them of "lack of business knowledge".

This is an isolated occurrence not repeated to my knowledge. Sometime ago the plaintiff was cautioned to cease and desist which it has done.

2. Submission to Smith of warranty reports giving fictitious names and addresses of owners of Smith water heaters.

In the climate created by the Smith Company, the plaintiff appears to have been unwilling to give Smith true names and addresses of its customers who made claims under warranties and as Smith says in its brief P. 8

"plaintiff does not want the end user to receive Smith's usual follow up communications . . ."

Smith has not charged that it has been directly defrauded of any money by this practice. Plaintiff's counsel has been advised that this practice must stop immediately and he has given assurance that it will.

3. Plaintiff's objection to payment of service costs as per agreement recited in this court's memorandum decision dated May 1, 1975 (P. 7).

and

4. Plaintiff's taking and retaining improper deductions from amounts due Smith.

On my insistence all payments have been made to Smith in accordance with its charges, albeit "under protest" and I see no valid reason for complaint on this score at this time.

5. Plaintiffs dilatory tactics in failing to proceed with discovery.

It ill becomes Smith to make this complaint. Smith's attorneys several times refused in my presence to produce any corporate officer of Smith for an examination before trial unless and until the plaintiff answered Smith's written interrogatories. Smith's interrogatories are as complex and complicated a puzzle as any jig-saw that my be contrived and Smith's attorneys have been most unelastic in their demands concerning these interrogatories although we have conferred on them for several hours on at least three occasions.

Reference to interrogatory No. 8 will demonstrate the problem:

"8. With regard to the allegations of paragraph 10 of the Complaint that "heretofore on an unknown date plaintiff offered to sell boilers and heaters to defendant GAS COMPANY", state

(A) the approximate date each alleged offer took place;

(B)(1) who made each alleged offer on behalf of plaintiff, (2) who at "GAS COMPANY" allegedly was informed of each offer, and (3) what response, if any, was made by "GAS COMPANY" to each alleged offer.

(C) the identity of each document or oral communication which refers or relates to each alleged offer, or represents, contains, constitutes or reflects it, or resulted from it"

The plaintiff answered:

"8. A. See 8C.

B. (1) Robert Schwimer

(2) Brian O'Toole - received plaintiff's first bid. Gordon C. Griswold, President, replied in writing. Marty Gibbons also replied in writing. Bob Keriensky.

(3) The Brooklyn Union Gas Company acknowledged receipt of one of the letters and Mr. Keriensky orally advised the plaintiff that no business would be given regardless of the attractiveness of the offer.

C. The dates of all written bid quotations or revised bid quotations made to Brooklyn Union Gas Company by plaintiff are as follows:

(1) June 23, 1972
(2) December 18, 1972
(3) February 1, 1973
(4) June 7, 1973
(5) June 18, 1973

(6) January 15, 1974
(7) April 4, 1974
(8) June 21, 1974
(9) August 5, 1974
(10) March 5, 1975
(11) April 20, 1975"

A. O. Smith is not satisfied with these answers and says that when the word "identify" is used the plaintiff must apply one of the four definitions of the word and match up the names given in B with the dates given in C.

Thus Smith's interrogatories and the manner in which they are being dealt with are reminiscent of the evils in the old Equity Rules which the Federal Rules of Civil Procedure were intended to eradicate. Such complex and complicated interrogatories and discovery which inevitably lead to protracted wrangling hardly insure the "just, speedy and inexpensive determination of every action" contemplated in F. R. C. P. I.

Animosity between Smith's employees on the one hand (Toth affidavit tab 11) and officers of the plaintiff on the other (Robert Schwimmer affidavit tab 8) has spilled over onto counsel so that both make abrasive utterances such as that of Smith's counsel in a letter to me dated September 5, 1975 (attached to reply affidavit of Don Allen Resnikoff - tab 10):

"the court's shotgun marriage of Smith and plaintiff by preliminary injunction is not happy, and ought not to be prolonged".

Plaintiff's attorney, at my urging, and after I pointed out to Smith's attorney that his client very well may become liable for all fees of plaintiff's attorney in this case, agreed to review carefully his answers to Smith's interrogatories and give answers fully and in the most minute and specific detail as required and without regard to the time that would have to be devoted to the task in doing so. Plaintiff is to comply by January 28, 1976.

The examination before trial of Smith's officers is scheduled to begin on February 5, 1976 by agreement.

Plaintiff has arranged to examine Equipment Distributors shortly and it has made extensive discovery of the records of Brooklyn Union Gas. Plaintiff's corporate officers long since have been examined by Smith.

In the light of the above it is my opinion that A. O. Smith has failed in its efforts to show the existence of new facts

such as would justify dissolution of the preliminary injunction granted herein under date of May 1, 1975. As was said in American Optical Co. v. Raytex Corp., 291 F. Supp. 502, 510 (S.D. N.Y. 1967) Tenney J. affirmed 394 F. 2d 155 cert. denied 393 U. S. 835, a modification or dissolution of an injunction

"requires a showing of changed circumstances so that continuance of the injunction is no longer justified and/or because it will work oppressively against the enjoined parties . . . In the absence of such a showing, the injunction will not be disturbed."

Again quoting from 78 Harvard Law Review 994, 1084 (1965)

"a party must demonstrate that the hardships which the new conditions work on him are severe in relation to those that would be suffered by the other party if modifications were to be granted."

I find nothing herein which fits into this category.

Respectfully submitted,

/s/ Vincent A. Catoggio
VINCENT A. CATOGGIO
United States Magistrate
Eastern District of New York

BEST COPY AVAILABLE